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Letter dated 6 December 2011 from the Permanent Representatives of Afghanistan and Germany to the United Nations addressed to the Secretary-General

We have the honour to forward herewith the Conference Conclusions of the International Afghanistan Conference entitled "Afghanistan and the international community: from transition to the transformation decade", held in Bonn on 5 December 2011 (see annex).

On behalf of our Governments we should like to express our sincere gratitude for your personal presence in Bonn. The Conference gave a powerful message of support for Afghanistan, both during and long after security transition is scheduled to end by the end of the year 2014. The United Nations will remain a cornerstone of this continued international support.

We should be grateful if the present letter and its annex could be circulated as a document of the General Assembly, under agenda item 38, and of the Security Council.

(*Signed*) Zahir **Tanin**
Permanent Representative of Afghanistan to the United Nations

(*Signed*) Peter **Wittig**
Permanent Representative of Germany to the United Nations

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Annex to the letter dated 6 December 2011 from the Permanent Representatives of Afghanistan and Germany to the United Nations addressed to the Secretary-General

The International Afghanistan Conference in Bonn 5 December 2011

Afghanistan and the International Community: From Transition to the Transformation Decade

CONFERENCE CONCLUSIONS

1. We, the Islamic Republic of Afghanistan and the International Community, met today in Bonn to mark the 10th anniversary of the 2001 Bonn Conference, which laid the foundation of the ongoing partnership between Afghanistan and the International Community, and to renew our mutual commitment to a stable, democratic and prosperous future for the Afghan people. We honour all those, from Afghanistan and abroad, who have lost their lives for this noble cause. Afghanistan expressed its sincere gratitude for the steadfast commitment, solidarity and the immense sacrifices of its international partners.

2. Afghanistan and the International Community expressed deep appreciation to the Federal Republic of Germany for hosting this Conference. Germany is a longstanding friend of Afghanistan and, in particular over the past ten years, alongside other members of the International Community, has been a steadfast partner in Afghanistan's stabilization and development.

3. Ten years ago today at the Petersberg, Afghanistan charted a new path towards a sovereign, peaceful, prosperous and democratic future, and the International Community accepted the responsibility to help Afghanistan along that path. Together we have achieved substantial progress over these ten years, more than in any other period in Afghanistan's history. Never before have the Afghan people, and especially Afghan women, enjoyed comparable access to services, including education and health, or seen greater development of infrastructure across the country. Al Qaida has been disrupted, and Afghanistan's national security institutions are increasingly able to assume responsibility for a secure and independent Afghanistan.

4. However, our work is not yet done. Shortcomings must be addressed, achievements must be upheld. Our shared goal remains an Afghanistan that is a peaceful and promising home for all Afghans, at the centre of a secure and thriving region; an Afghanistan in which international terrorism does not again find sanctuary and that can assume its rightful place among sovereign nations.

5. In today's conference, chaired by Afghanistan, hosted by Germany and attended by 85 countries and 15 International Organisations, the International Community and Afghanistan solemnly dedicated themselves to deepening and broadening their historic partnership from Transition to the Transformation Decade of 2015-2024. Reaffirming our commitments as set out in the 2010 London Communiqué and the Kabul Process, this renewed partnership between Afghanistan and the International Community entails firm mutual commitments in the areas of governance, security, the peace process, economic and social development, and regional cooperation.

GOVERNANCE

6. Afghanistan reaffirms that the future of its political system will continue to reflect its pluralistic society and remain firmly founded on the Afghan Constitution. The Afghan people will continue to build a stable, democratic society, based on the rule of law, where the human rights and fundamental freedoms of its citizens, including the equality of men and women, are guaranteed under the Constitution. Afghanistan recommits to upholding all of its international human rights obligations. Acknowledging that on this path Afghanistan will have its own lessons to learn, the International Community fully endorses this vision and commits to supporting Afghanistan's progress in that direction.

7. We have taken note of statements by Afghan civil society organizations, including today's statements by two of their delegates at this meeting. We all reaffirm that the human rights and fundamental freedoms enshrined in the Afghan Constitution, including the rights of women and children, as well as a thriving and free civil society are key for Afghanistan's future. Therefore, we underscore the further promotion of civil society participation, including both traditional civil society structures and modern manifestations of civic action, including the role of youth, in the country's democratic processes.

8. We recognise that building a democratic society above all entails enabling legitimate and effective civilian authority embodied in a democratically elected government and served by transparent and strong, functioning institutions. Despite significant achievements, Afghanistan needs to continue its work to strengthen state institutions and improve governance throughout the country, including through reforming the civil service and strengthening the linkage between justice reform and development of its security institutions, including an effective civilian police force. Strengthening and improving Afghanistan's electoral process will be a key step forward in the country's democratization. Afghan government institutions at all levels should increase their responsiveness to the civil and economic needs of the Afghan people and deliver key services to them. In this context, the protection of civilians, strengthening the rule of law and the fight against corruption in all its forms remain key priorities. We will move this agenda forward, in accordance with our commitments under the Kabul Process in line with the principle of mutual accountability.

9. Consistent with Transition, we reaffirm that the role of international actors will evolve further from direct service delivery to support and capacity-building for Afghan institutions, enabling the Government of Afghanistan to exercise its sovereign authority in all its functions. This process includes the phasing out of all Provincial Reconstruction Teams, as well as the dissolution of any structures duplicating the functions and authority of the Government of Afghanistan at the national and sub-national levels.

10. We support the crucial role of the United Nations in Afghanistan. We express our gratitude to the United Nations Secretary General's Special Representative Staffan de Mistura for his dedicated service, and welcome the Secretary General's decision to appoint Jan Kubis as his new Special Representative for Afghanistan. We note that the UNAMA mandate is currently under review in

line with the increased capacity and ownership exercised by the Government of Afghanistan and consistent with the process of Transition that entails the assumption of leadership responsibility by the Afghan Government. We also take note with appreciation of the close collaboration of the International Contact Group with the Afghan Government and their work, and encourage them to continue their joint efforts.

SECURITY

11. We welcome the determination of the Afghan people to combat terrorism and extremism and take responsibility for their own security and for protecting their homeland. We share Afghanistan's vision for its national security forces to be built to modern standards and adequate capacity, so that they can effectively and independently defend Afghanistan.

12. We welcome the successful start of the Transition process. Afghan authorities are assuming full security responsibility for their country and will complete this process by the end of 2014. Correspondingly, the International Security Assistance Force (ISAF), authorized by the United Nations Security Council, has begun a gradual, responsible draw-down to be completed by that time. With the conclusion of the Transition process, our common responsibility for Afghanistan's future does not come to a close. The International Community, therefore, commits to remain strongly engaged in support of Afghanistan beyond 2014.

13. We underscore that the international support for sustainable Afghan National Security Forces (ANSF) needs to continue after 2014. In assistance to the ANSF, the International Community strongly commits to support their training and equipping, financing and development of capabilities beyond the end of the Transition period. It declares its intent to continue to assist in their financing, with the understanding that over the coming years this share will gradually be reduced, in a manner commensurate with Afghanistan's needs and its increasing domestic revenue generation capacity. In this context, we look forward to define a clear vision and appropriately funded plan for the ANSF, which should be developed before the forthcoming NATO summit in Chicago in May 2012.

14. We recognise that the main threat to Afghanistan's security and stability is terrorism, and that this threat also endangers regional and global peace and security. In this regard, we recognise the regional dimensions of terrorism and extremism, including terrorist safe havens, and emphasise the need for sincere and result-oriented regional cooperation towards a region free from terrorism in order to secure Afghanistan and safeguard our common security against the terrorist threat. We reiterate our common determination to never allow Afghanistan to once again become a haven for international terrorism.

15. The production, trafficking and consumption of narcotics equally pose a grave threat to Afghanistan's security and the growth of a legitimate economy as well as to international peace and stability. Recognizing their shared responsibility, Afghanistan and the International Community reiterate their determination to counter, in a comprehensive manner, including by crop eradication, interdiction and promoting alternative agriculture, the menace of illicit drugs, including drug precursors, which causes widespread harm and

suffering. We recognise that the narcotics problem is a global challenge which also requires tackling the demand side.

PEACE PROCESS

16. We stress the need for a political solution in order to achieve peace and security in Afghanistan. To ensure enduring stability, in addition to building up Afghanistan's capacity to defend itself, a political process is necessary, of which negotiation and reconciliation are essential elements. In addition, the process of reintegration will pave the way for post-conflict rehabilitation of Afghan society through improvement of security, community development and local governance.

17. We condemn in the strongest terms the assassination of Professor Burhanuddin Rabbani, former President of Afghanistan and Chairman of the High Peace Council. The International Community welcomes and supports the undeterred peace efforts of the Afghan Government, particularly through the High Peace Council and the Afghanistan Peace and Reintegration Programme. We also take note of the recommendations of the consultative Traditional Loya Jirga of 16-19 November 2011, which provided a new impetus to the peace process.

18. Mindful of the relevant United Nations resolutions, the International Community concurs with Afghanistan that the peace and reconciliation process and its outcome must be based on the following principles:

(a) The process leading to reconciliation must be

- truly Afghan-led and Afghan-owned; as well as
- inclusive, representing the legitimate interests of all the people of Afghanistan, regardless of gender or social status.

(b) Reconciliation must contain

- the reaffirmation of a sovereign, stable and united Afghanistan;
- the renunciation of violence;
- the breaking of ties to international terrorism;
- respect for the Afghan Constitution, including its human rights provisions, notably the rights of women.

(c) The region must respect and support the peace process and its outcome.

An outcome of the peace process respecting the above principles will receive the full support of the International Community.

ECONOMIC AND SOCIAL DEVELOPMENT

19. The International Community shares Afghanistan's aim of achieving self-reliance and prosperity through developing its human and resource potential on its path towards sustainable and equitable growth and improved standards of living, and welcomes the Afghan Government's economic Transition strategy as elaborated in the document *Towards a Self-Sustaining Afghanistan*. Shifting the strategy from stabilisation to long-term development cooperation, the International Community will continue to support Afghanistan, including

in the areas of rule of law, public administration, education, health, agriculture, energy, infrastructure development and job creation, in line with the Afghan Government's priorities as specified in the National Priority Programmes framework under the Kabul Process.

20. As the Afghan government sets priorities, embraces reform and meets its Kabul commitments, including strengthening transparent and accountable public financial management systems and improving budget execution capacity, its partners recommit to meeting the minimum targets set in London and Kabul for aligning international assistance with Afghanistan's priorities and channelling a growing share of development aid through the government budget. We welcome the Government of Japan's intention to host a ministerial conference in July 2012 in Tokyo, which will address, in addition to the coordination of international economic assistance through the Transition period, Afghanistan's strategy for sustainable development, including aid effectiveness and regional economic cooperation.

21. As Transition gathers momentum, we recognise the economic risks identified by the World Bank and the International Monetary Fund, including the economic impact tied to the reduction of the international military presence. We intend to mitigate this effect, including by increasing aid effectiveness, consistent with the Kabul Process. The International Community shares Afghanistan's concern that a strategy to address the near-term effects of Transition must also facilitate the goal of attaining a sustainable market economy in line with the social needs of the population.

22. The intensive international effort in Afghanistan over the last decade represents a unique engagement. The International Community's commitment, both to Afghanistan and to its role in international security, lasts beyond Transition. Transition will reduce the international presence and the financial requirements associated with it. We recognize that the Government of Afghanistan will have special, significant and continuing fiscal requirements that cannot be met by domestic revenues in the years following Transition. Therefore, during the Transformation Decade, the International Community commits to directing financial support, consistent with the Kabul Process, towards Afghanistan's economic development and security-related costs, helping Afghanistan address its continuing budget shortfall to secure the gains of the last decade, make Transition irreversible, and become self-sustaining.

23. Afghanistan's long-term economic growth will, above all, depend on the development of its productive sectors, notably agriculture and mining. The International Community commits to supporting the development of an export-oriented agriculture-based economy, which is crucial for Afghanistan to achieve food security, poverty reduction, widespread farm-based job creation, and expanding the Government's revenue generation capacity. Concerning mining, we welcome the growing interest of international investors in Afghanistan's mineral wealth but emphasise the need for a regulatory framework to guarantee that this mineral wealth directly benefits the Afghan people. The International Community supports Afghanistan's efforts to develop a transparent and accountable regulatory regime, consistent with international best practices, for collecting and managing public resources and preserving the environment.

24. We recognise that a vibrant, private sector-led economy in Afghanistan will require the development of a competitive service industry and a stable financial system, and achieving regional integration through expanding Afghanistan's trade and transit networks, as well as its regional connectivity. The International Community commits to support Afghanistan's efforts to put in place and enhance the infrastructure and the relevant regulatory frameworks for the development of trade and transit.

25. We emphasize that attracting private investment, including from international sources, are key priorities for activating Afghanistan's economic potential. The Afghan Government commits to improving conditions conducive to international investments, inter alia, by implementing the recommendations of the EUROMINES International Investors Forum in Brussels on 26 October 2011.

REGIONAL COOPERATION

26. We believe that a stable and prosperous Afghanistan can only be envisioned in a stable and prosperous region. For the entire region, the rewards of peace and cooperation outweigh those of rivalry and isolation by far. We endorse Afghanistan's vision for building strong, sustainable bilateral and multilateral relationships with its near and extended neighbours. Such relationships should end external interference, reinforce the principles of good-neighbourly relations, non-interference and sovereignty, and further Afghanistan's economic integration into the region.

27. We welcome the outcome of the "Istanbul Conference for Afghanistan: Security and Cooperation in the Heart of Asia" of 2 November 2011. In particular, we take note of the principles concerning territorial integrity, sovereignty, non-intervention and the peaceful settlement of disputes contained in the Istanbul Process, which we support as a valuable step towards building greater confidence and cooperation in the 'Heart of Asia' region. We call for strict adherence by Afghanistan and its regional partners to these principles, and look forward to the follow-up Ministerial Conference in June 2012 in Kabul.

28. With a view to the long-term prospects for Afghanistan's development, we share Afghanistan's vision of a well-connected, economically integrated region, where Afghanistan can serve as a land-bridge connecting South Asia, Central Asia, Eurasia and the Middle East. We support enhanced trade connectivity along historical trade routes to utilize Afghanistan's economic potential at the regional level. In this context, we recognize the importance of early implementation of sustainable projects to promote regional connectivity, such as the TAPI gas pipeline, CASA-1000, railways and other projects. In this context, we look forward to the 5th RECCA conference to be hosted by the Republic of Tajikistan in Dushanbe in March 2012.

29. We acknowledge the burden of Afghanistan's neighbours, in particular Pakistan and Iran, in providing temporary refuge to millions of Afghans in difficult times and are committed to further work towards their voluntary, safe and orderly return.

THE WAY FORWARD

30. With a view to the future, we underscore that the process of Transition, which is currently underway and is to be completed by the end of 2014, should be followed by a decade of Transformation, in which Afghanistan consolidates its sovereignty through strengthening a fully functioning, sustainable state in the service of its people. This Transformation Decade will see the emergence of a new paradigm of partnership between Afghanistan and the International Community, whereby a sovereign Afghanistan engages with the International Community to secure its own future and contin es to be a positive factor for peace and stability in the region.

31. At today's meeting, Afghanistan laid out its vision of the future: a country that is a stable and functioning democracy, a strong and sustainable state in the service of its people, and a prospering economy. Embedded in a region that is conducive to prosperity and peace, and enjoying friendly relations with all of its near and extended neighbours, Afghanistan aspires to becoming a contributor to international peace and security.

32. With a view to realizing the above vision, the International Community and Afghanistan make firm mutual commitments to continue to working together in a spirit of partnership. Afghanistan reiterates its commitment to continue to improve governance, while the International Community commits to an enduring engagement with Afghanistan through and beyond 2014.

33. Today in Bonn, we solemnly declare a strategic consensus on deepening and broadening the partnership between Afghanistan and the International Community founded at the Petersberg ten years ago. Building on the shared achievements of the past ten years, and recognising that the security and well-being of Afghanistan continue to affect the security of the entire region and beyond, Afghanistan and the International Community strongly commit to this renewed partnership for the Transformation Decade.

Adopted on 5 December 2011 by the Islamic Republic of Afghanistan, the Republic of Albania, the People's Democratic Republic of Algeria, the Argentine Republic, the Republic of Armenia, Australia, the Republic of Austria, the Republic of Azerbaijan, the Kingdom of Bahrain, the People's Republic of Bangladesh, the Kingdom of Belgium, Bosnia and Herzegovina, Federative Republic of Brazil, Brunei Darussalam, the Republic of Bulgaria, Canada, the People's Republic of China, the Republic of Colombia, the Republic of Croatia, the Republic of Cyprus, the Czech Republic, the Kingdom of Denmark, the Arab Republic of Egypt, the Republic of El Salvador, the Republic of Estonia, the Republic of Finland, the French Republic, Georgia, the Federal Republic of Germany, the Hellenic Republic, the Republic of Hungary, the Republic of Iceland, the Republic of India, the Republic of Indonesia, the Islamic Republic of Iran, the Republic of Iraq, Ireland, the Republic of Italy, Japan, the Hashemite Kingdom of Jordan, the Republic of Kazakhstan, the Republic of Korea, the State of Kuwait, the Kyrgyz Republic, the Republic of Latvia, the Lebanese Republic, the Principality of Liechtenstein, the Republic of Lithuania, the Grand Duchy of Luxembourg, the former Yugoslav Republic of Macedonia, Malaysia, the Republic of Malta, the United Mexican States, Mongolia, Montenegro, the Kingdom of Morocco, the Kingdom of the Netherlands, New Zealand, the Kingdom of Norway, the Sultanate of Oman, the Republic of the Philippines, the Republic of Poland, the Portuguese Republic, the

State of Qatar, Romania, the Russian Federation, the Kingdom of Saudi Arabia, the Slovak Republic, the Republic of Slovenia, the Republic of South Africa, the Kingdom of Spain, the Kingdom of Sweden, the Swiss Confederation, the Republic of Tajikistan, the Kingdom of Thailand, the Republic of Tunisia, the Republic of Turkey, Turkmenistan, Ukraine, the Oriental Republic of Uruguay, the United Kingdom of Great Britain and Northern Ireland, the United Arab Emirates, the United States of America, the Republic of Uzbekistan, and the Socialist Republic of Viet Nam, as well as the Aga Khan Development Network, the Asian Development Bank, the Conference on Interaction and Confidence-Building Measures in Asia, the Collective Security Treaty Organisation, the Economic Cooperation Organization, the European Union, the International Monetary Fund, the Islamic Development Bank, the North Atlantic Treaty Organization, the Organisation of the Islamic Cooperation, the Organization for Security and Co-operation in Europe, the South Asian Association for Regional Cooperation, the Shanghai Cooperation Organisation, the United Nations, and the World Bank Group.

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Comprehensive review of the whole question of peacekeeping operations in all their aspects

Comprehensive report on all processes involved in the investigation and prosecution of crimes committed against deployed United Nations peacekeepers

Report of the Secretary-General

I. Introduction

1. The present report, submitted pursuant to the request of the Special Committee on Peacekeeping Operations contained in its report on its substantive session of 2011 (A/65/19), supplements the report of the Secretary-General on the prosecution of crimes against deployed peacekeepers (A/65/700), which was submitted pursuant to the request made by the Special Committee at its substantive session of 2010 (A/64/19). In paragraph 41 of its report on its substantive session of 2011, the Special Committee requested the Secretary-General to prepare and submit, by the end of November 2011, a further comprehensive report on all processes involved in the investigation and prosecution of crimes committed against deployed United Nations peacekeepers. The Special Committee indicated that the report should encompass, inter alia, the legal rights of the troop- and police-contributing countries and the procedures for their participation in all the processes of the investigation of crimes, and acts of serious misconduct committed against their nationals deployed as United Nations peacekeepers, and include advice on the feasibility of adapting the United Nations investigative mechanism, as provided for in a revised model memorandum of understanding whose possible United Nations-wide application had been endorsed by the General Assembly in resolution 61/267 B, with respect to such crimes.

2. The present report contains information on the following: (a) the legal and jurisdictional framework for the investigation and prosecution of crimes against peacekeepers; (b) the practice of the Organization with regard to cooperation with the States concerned in the investigation and prosecution of such crimes; (c) the investigative procedures set out in the revised model memorandum of understanding (see A/C.5/63/18, chap. 9); and (d) a comparative summary of investigations

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conducted under the revised model memorandum of understanding of crimes committed against and by peacekeepers.

II. Legal framework for the investigation and prosecution of crimes against peacekeepers

A. Jurisdiction of the host Government

3. Under international law, States hosting United Nations peacekeepers have the right and the obligation to investigate and prosecute crimes committed within their territories against peacekeepers. The United Nations does not have the legal capacity to institute criminal investigations into such incidents.

4. In addition, the Convention on the Safety of United Nations and Associated Personnel of 1994 requires States parties to the Convention to pass legislation that criminalizes attacks on peacekeepers and provides for the prosecution and punishment of such attacks.

5. Pursuant to article 9 of the Convention, States parties are required to establish the following as crimes under their national laws, when committed intentionally, and to make such crimes punishable by appropriate penalties, taking into account their grave nature:

(a) A murder, kidnapping or other attack upon the person or liberty of any United Nations or associated personnel;

(b) A violent attack upon the official premises, the private accommodation or the means of transportation of any United Nations or associated personnel likely to endanger his or her person or liberty;

(c) A threat to commit any such attack with the objective of compelling a physical or juridical person to do or to refrain from doing any act;

(d) An attempt to commit any such act;

(e) Any act constituting participation as an accomplice in any such attack, or in organizing or ordering others to commit such attack.

6. Pursuant to article 10 of the Convention, each State party is required to establish its jurisdiction over the crimes set out in article 9 when the crime is committed in its territory or on board a ship or aircraft registered in that State, or when the alleged offender is a national of that State. Moreover, article 10 provides that a State party may establish jurisdiction over the crimes set out in article 9 when it is committed by a stateless person whose habitual residence is in that State, with respect to a national of that State or in an attempt to compel that State to do or to abstain from doing any act.

7. As noted in the report of the Secretary-General on the prosecution of crimes against deployed peacekeepers (A/65/700, para. 4), the provisions of articles 9 and 10 of the Convention are now routinely incorporated into status-of-forces or status-of-mission agreements concluded by the United Nations with countries in which peacekeepers are deployed. In addition, those agreements require the host Government to prosecute perpetrators of the acts mentioned in article 9 of the Convention that are within its jurisdiction, unless it decides to extradite them to

another State for prosecution. Consistent with paragraph 45 of the model status-of-forces agreement (A/45/594), the host country is required to prosecute persons accused of acts in relation to a peacekeeping operation or its members which, if committed against the host country's forces, would be liable to prosecution.

B. Jurisdiction of the International Criminal Court

8. Grave attacks against peacekeepers may constitute war crimes under the Rome Statute of the International Criminal Court whether they take place during an armed conflict of an international character (see article 8 (2) (b) (iii)) or during an armed conflict not of an international character (see article 8 (2) (e) (iii)). As already noted (A/65/700, para. 5), while States parties to the Rome Statute have primary jurisdiction to investigate and prosecute such war crimes, the International Criminal Court may investigate or prosecute such crimes where the State concerned is unwilling or genuinely unable to do so, provided that the conditions for the exercise of its jurisdiction are met.

C. Jurisdiction of States whose nationals are peacekeepers who have been the victims of crimes

9. Some police- and troop-contributing countries may have extraterritorial jurisdiction pursuant to their national laws over certain crimes committed against their peacekeeping personnel. Moreover, some police- and troop-contributing countries may have bilateral arrangements to facilitate cooperation with the host country in the investigation and prosecution of crimes. In addition, the country that has contributed police officers or troops may have an extradition treaty with the host country, pursuant to which a person committing a crime against a peacekeeper may be extradited to the peacekeeper's State of nationality for prosecution.

10. The exercise of jurisdiction by the State of which the peacekeeper is a national, and any cooperation between that State and the host State are entirely within the purview of that State and may be subject to whatever arrangements it makes with the host State. The United Nations, for its part, provides whatever relevant information it may have in its possession to facilitate the investigations conducted by the State of nationality or the host State, as the case may be.

III. Current procedures for the investigation and prosecution of crimes against peacekeepers

A. Preliminary fact-finding or internal administrative investigations by the United Nations

11. In most cases, crimes committed against peacekeepers will, depending on the seriousness of the particular incident, be subject to an internal United Nations

investigation, including, in some cases, the establishment of a board of inquiry.[1] This is because such incidents may have administrative, financial, operational or policy implications for the United Nations, and therefore need to be investigated independently of the fact that they may also constitute criminal offences. Such internal inquiries by the United Nations do not follow the prescriptions of criminal laws. In particular, boards of inquiry are prohibited from addressing issues of legal liability. Thus, in conducting its internal investigations, the United Nations is careful to avoid actions that might be prejudicial to any criminal investigation related to a specific incident.

12. While the United Nations investigation is not a criminal investigation, it may uncover information or evidence that may be of value for the purpose of criminal proceedings. Such information or items may therefore be preserved and, as appropriate, shared with the authorities conducting a criminal investigation, and may be produced in the course of court proceedings. The provision of reports on internal United Nations investigations or other evidence in the possession of the Organization is subject to certain conditions and considerations, including privileges and immunities, confidentiality obligations and safety and security.

13. United Nations internal investigations may help identify witnesses whose knowledge of the facts of an incident may be critical to a successful investigation or prosecution of a crime. Where the witness in question is a current or former peacekeeper, the Organization will facilitate the giving of testimony by such witness, always subject, as mentioned above, to the Organization's privileges and immunities, any duty of confidentiality that may be owed by the United Nations to third parties and assurances regarding the safety of witnesses or other innocent third parties. When the witnesses involved are current or former peacekeepers, the Organization will coordinate with and seek the cooperation of their respective Governments.

B. Follow-up with host country authorities on the status of national investigations and prosecutions

14. Whenever serious crimes, especially those involving violent attacks or kidnapping, are committed against United Nations peacekeepers, the United Nations reports such incidents to the host Government and requests its assistance in addressing the incidents. In the case of violent attacks, the host Government is requested to conduct the investigation in accordance with its national law and to prosecute the offenders, as appropriate, if they are apprehended. In the case of a kidnapping, the primary concern of the United Nations is to ensure the safety of the victim. Thus, at the outset, the host Government is requested to intercede with the kidnappers so that the victim may be released unharmed and, once the victim has been freed, to investigate the matter with a view to prosecuting the perpetrators.

15. Cooperation with the host country in the investigation of cases and follow-up by the United Nations on the status of such investigations may take place in the field through contacts between the peacekeeping mission and host country authorities

[1] Pursuant to the standard operating procedure on boards of inquiry issued on 1 March 2011 and currently in force, a board of inquiry is mandatory whenever an incident results in the death or serious injury of a member of a peacekeeping operation.

with regard to specific cases, as well as in regular liaison meetings where issues concerning the implementation of the status-of-forces agreement are reviewed. Where necessary, these matters can also be discussed at United Nations Headquarters with the Permanent Mission of the country to which the peacekeeping operation has been deployed and where the attack or other serious crime against peacekeepers occurred.

C. Recent examples of cooperation with host countries with regard to investigations and prosecutions

16. A review of the experience gained in various peacekeeping operations in recent years provides an outline of the main features of the Organization's cooperation with Governments on investigations and prosecutions, as well as the related challenges. Most of the cases on which the United Nations has cooperated with national authorities, in terms both of the investigation and prosecution of the alleged crime, relate to armed attacks against peacekeeping personnel, many of which have resulted in death. It is important to emphasize, however, that the United Nations has no control over such prosecutions, and that, in many cases, the host country authorities have not sought any particular assistance from the United Nations, although they have sometimes informed the peacekeeping operation concerned about the outcome of the trial. The extent to which the United Nations is involved in dealing with crimes committed against peacekeepers may also depend on the mandate of a particular peacekeeping operation and on the capacity of the host country's national institutions responsible for law enforcement and the administration of justice.

17. The United Nations cooperates with Governments on investigations and judicial proceedings related to the prosecution of perpetrators of serious crimes against peacekeepers to the extent that such proceedings comply with international human rights standards, including the right of the accused to be afforded due process.

18. For example, in one mission, some cases involving fatal attacks on United Nations peacekeepers were investigated by the mission's military police, with assistance from the national police authorities. In accordance with its mandate to assist in the professional development and capacity-building of the national police, the mission in question was systematically requested to assist and provide leadership in the investigation of major crimes. In another mission, the United Nations cooperated with the host country authorities to facilitate the giving of testimony by former peacekeepers who had served in that peacekeeping operation, in connection with the prosecution of an individual charged with murder related to the fatal shooting of three of their colleagues in July 2009. The United Nations and the troop-contributing country concerned made arrangements so that two peacekeepers who had been present during the shooting incident and who had subsequently been repatriated upon completion of their tour of duty could return to the host country to give testimony during the trial. The court acquitted the accused on the grounds that he had been improperly identified during an identification parade following his arrest.

19. In another mission, the host country authorities detained three persons allegedly responsible for an attack committed in 2003 that resulted in the death of

two United Nations military observers; those individuals are still awaiting trial. The authorities also arrested and put on trial nine people in connection with an attack committed in 2010 that resulted in the death of three United Nations peacekeepers and injuries to another three. One of the accused was convicted and sentenced to death, three were given life sentences and one was sentenced to 60 months of imprisonment. Four of the accused were released for lack of evidence. Following an attack on United Nations peacekeepers on 4 April 2010 in the same peacekeeping mission, eight suspects were arrested by the host country authorities. Of the eight, three were jailed for life, one escaped and four are currently on trial. The host country has kept the mission informed about the status of the cases. Moreover, since the provision of support to both the armed forces and national police of the host country forms part of the particular mission's mandate in that case, the United Nations has provided assistance to the national authorities in investigating attacks against peacekeepers.

20. In another peacekeeping mission, host country authorities are still investigating an attack that was launched against peacekeepers in June 2007 by elements using an improvised explosive device, in which six peacekeepers died, as well as a similar attack, on 26 July 2011, on the mission's logistics convoy, in which three soldiers were seriously injured. In the same mission, one person was prosecuted by the host country authorities and sentenced to three years in jail for an attack involving an improvised explosive device that injured two peacekeepers on 8 January 2008. The court of that State also tried and sentenced to life imprisonment four other individuals alleged to have taken part in the attack. In all these cases, the mission conducted its own internal investigations and, upon the issuance of a military police report, established boards of inquiry. Since the internal inquiries are not criminal investigations, the host country authorities continue to be responsible for completing the outstanding investigations and prosecuting those responsible, if apprehended.

21. In a different mission, United Nations military police are continuing their investigation into the fatal shooting of a peacekeeper by unknown assailants while he was on sentry duty on 9 April 2011. The military police have been assisted in this investigation by the host country police, who have conducted a forensic examination of the scene of the shooting. The investigation by the mission's military police was preceded by an investigation by a board of inquiry conducted pursuant to the procedures of the troop-contributing country. So far, no suspect has been identified.

22. Another peacekeeping mission has cooperated with national law enforcement and judicial authorities in the investigation of several serious attacks against United Nations police officers: the fatal shooting on 12 April 2008 of a United Nations police officer who was with two colleagues at a local market; the apparent murder on 4 November 2010 of a United Nations police officer at his residence; an armed robbery committed on 14 May 2011 against three United Nations police officers at their residence; and the fatal shooting on 19 August 2011 of one United Nations police officer by armed robbers.

23. In the case of the fatal shooting at a local market, the United Nations arranged for three colleagues of the deceased who had been repatriated from the mission following completion of their assignment to return to the host country to be interviewed by the investigating judge handling the case. Two suspects were arrested and charged with murder and although both escaped one has since been

recaptured and is awaiting trial. The mission has also assisted the investigating judge in reconstituting the file on the case, as the host country's records had been destroyed in a natural disaster. In the case of the United Nations police officer found dead at his residence on 4 November 2010, two suspects have been arrested and charged with murder. With regard to the three police officers who were robbed at gunpoint at their residence on 14 May 2011, the mission filed a complaint with the host country authorities. As a result, the authorities have instituted an investigation, in which the three officers have been questioned by the investigating judge. The police officer who survived the armed attack on 19 August 2011 that led to the death of his colleague with whom he was residing has also provided testimony to the investigating judge.

24. Cooperation between a United Nations peacekeeping operation and the investigative authorities of a State may take place in the field or at United Nations Headquarters, depending on the issues involved and the circumstances of the case. In the field, cooperation related to the investigation and prosecution of cases may involve the peacekeeping operation's civilian security section, military police, civilian police component or the Office of Internal Oversight Services. In interacting with the national authorities, all these units are assisted or advised by the mission's legal office, as appropriate. Cooperation related to prosecutions is coordinated by the mission's legal office and may involve other offices, such as the rule of law or justice sections. In those peacekeeping operations where the local authorities lack the required capacity and where the mission's mandate permits, the mission may also assist in apprehending suspects and transferring them to the relevant authorities.

25. It should be noted that two of the five host States that have conducted investigations and prosecutions of attacks against United Nations peacekeepers pursuant to their national laws have not acceded to the Convention on the Safety of United Nations and Associated Personnel. The other three States are parties to the Convention. All five States have concluded a status-of-forces agreement with the United Nations; four of the five agreements include explicit provisions incorporating paragraphs 9 and 10 of the Convention, which require the criminalization and prosecution of attacks against United Nations and associated personnel.

IV. Outline of the investigative procedures set out in the revised model memorandum of understanding

26. The investigative procedures set out in the revised model memorandum of understanding, which was endorsed by the General Assembly in its resolution 61/267 B, outline and emphasize the responsibility and role of the troop-contributing countries in dealing with acts of misconduct committed by personnel of national military contingents. The procedures foresee only a limited role for the United Nations, which may conduct preliminary fact-finding investigations only to the extent and only for as long as the troop-contributing country has not started its investigation. Insofar as acts of misconduct committed by military contingent personnel may also constitute criminal offences, they are subject to the exclusive jurisdiction of the troop-contributing country in accordance with the relevant status-of-forces agreement (A/45/594, para. 47 (b)) and the revised model memorandum of

understanding. In line with this principle, crimes committed by national military contingent personnel are subject to the investigative authority of the contributing country, as well as to prosecution in accordance with that country's national laws. It is important to recall that these investigation procedures apply only with respect to acts of misconduct committed by members of national military contingents and are not therefore relevant to formed police units, whose members are not subject to the exclusive jurisdiction of the police-contributing country in this regard and are thus liable to prosecution by the host country under its laws should they commit crimes within its territory.[2]

27. To the extent that an act of misconduct or a crime committed by the member of a military contingent has operational, administrative or legal implications for the United Nations, the role of the United Nations, limited as it is, has been defined in the model memorandum of understanding.

28. In this regard, and pursuant to article 7 quater, paragraph 7.12, of the model memorandum of understanding, the United Nations is required, if it has prima facie grounds indicating that any member of the Government's national contingent has committed an act of misconduct or serious misconduct, to inform the Government of such an occurrence. In the case of serious misconduct, the United Nations will take immediate steps to preserve evidence related to the incident and may initiate a preliminary fact-finding inquiry, which may be conducted by the Office of Internal Oversight Services, until the Government commences its own investigation. The preliminary fact-finding inquiry shall include a representative of the Government as part of the investigation team. The United Nations shall provide a complete report of its inquiry to the Government.

29. Pursuant to article 7 quater, paragraph 7.13, of the model memorandum of understanding, the United Nations may also conduct an administrative investigation if, after 10 days of informing the Government about alleged serious misconduct by contingent personnel, the Government has not instituted a national investigation in accordance with the model memorandum of understanding. The team for any such administrative investigation would include a representative of the Government if the Government provides one. The United Nations shall provide the Government with the findings of the investigation, as well as any evidence gathered in the course of said investigation.

30. An increasing number of investigations under the model memorandum of understanding are conducted by the Government providing the peacekeeping personnel, in accordance with the national laws of that Government. Except for a decreasing number of instances in which the United Nations may conduct a preliminary fact-finding or administrative investigation, the role of the United

[2] Pursuant to guidelines issued by the Department of Peacekeeping Operations and the Department of Field Support, the procedures for the investigation of alleged misconduct by civilian police officers and military observers apply also to alleged misconduct by members of formed police units. Accordingly, acts of misconduct by members of formed police units will be subject to a preliminary investigation by the relevant peacekeeping mission and may be subject to the scrutiny of a board of inquiry, as provided in the Directives for Disciplinary Matters involving Civilian Police Officers of 2003 (annex 11 to the Guidelines for Formed Police Units on Assignment with Peace Operations of 2006). Reports of such preliminary investigations and boards of inquiry may be shared with relevant States in appropriate circumstances, including States conducting criminal investigations related to the same subject matter.

Nations is to assist national investigation officers, if necessary, in the conduct of their investigations in terms of the identification and interviewing of witnesses, the recording of witness statements, the collection of documentary and forensic evidence and the provision of administrative as well as logistical assistance. Pursuant to article 7 quater, paragraph 7.19, of the model memorandum of understanding, subject to its national laws and regulations, the Government shall provide the United Nations with the findings of investigations conducted by its competent authorities, including national investigation officers, into possible misconduct or serious misconduct by any member of its contingent.

V. Comparative summary of investigations conducted under the revised model memorandum of understanding of crimes committed against and by peacekeepers

31. The model memorandum of understanding outlines standard terms of agreement between the United Nations and Member States that provide military contingent personnel to United Nations peacekeeping operations. The terms relate to modalities for the investigation of crimes committed by peacekeepers pursuant to the provisions of the model memorandum of understanding. The investigation of crimes committed against peacekeepers is the responsibility of the host Government and is subject to the laws of the host country, as provided in the status-of-forces agreement and pursuant to international law. As noted in the report of the Secretary-General on the prosecution of crimes against deployed peacekeepers (A/65/700, para. 7), due to this distinction, the modalities are adaptable only to the extent that, in both cases, the United Nations will provide information it deems relevant about a given crime arising from any internal investigation or board of inquiry it may have conducted and may also facilitate witness or victim testimony to assist the Member State concerned in fulfilling its obligation to carry out the necessary investigation or prosecution.

32. The United Nations does not have the authority or capacity to conduct criminal investigations in respect of alleged crimes occurring in the host State's territory, whether those crimes are committed by or against peacekeepers. As noted above, the United Nations may only conduct internal investigations for administrative purposes. In the case of misconduct or serious misconduct by its peacekeepers, it may conduct both a preliminary fact-finding inquiry and an administrative investigation, depending on the circumstances. From a criminal law and procedural perspective, such investigations are limited in scope because the United Nations does not have the legal authority to compel witnesses to cooperate in its investigations and there may be obstacles regarding the admissibility of United Nations investigation reports under the criminal procedure laws of Member States. Moreover, with regard to investigations into acts committed by military contingent members, the United Nations may conduct a preliminary fact-finding inquiry or administrative investigation only for as long as and to the extent that the relevant troop-contributing country has not initiated its own investigation.

33. In conducting these procedures, whether pursuant to the revised model memorandum of understanding or standard operating procedures (for example, those related to boards of inquiry), the United Nations takes meticulous care to avoid any interference with or encroachment upon criminal investigations for which national

authorities have responsibility. However, should the United Nations come upon material that might constitute evidence for the purpose of a criminal investigation or prosecution, it will cooperate, as appropriate, with investigators or judicial officials of the State with criminal jurisdiction in the matter.

VI. Conclusion

34. Criminal trials and prosecutions, whether involving crimes committed by or against peacekeepers, are conducted in accordance with the criminal procedure and evidence laws of the State exercising jurisdiction in the case: the laws of the troop-contributing country in respect of crimes committed by United Nations peacekeepers or the laws of the host State in respect of crimes committed against United Nations peacekeepers. The applicable national laws may be significantly different from one country to another.

35. From a practical standpoint, it is difficult to envisage the procedures for the investigation of misconduct and serious misconduct provided in the model memorandum of understanding as a source of rules of general application for criminal investigations across different national jurisdictions. Moreover, since the investigation of misconduct and serious misconduct by peacekeepers on the one hand and of crimes committed against peacekeepers on the other is conducted by different States in accordance with their relevant national laws, it is all the more difficult for the United Nations to propose the procedures set forth in the model memorandum of understanding, with or without adaptations, for general application in the investigation of crimes committed against peacekeepers that are within their respective criminal jurisdictions.

United Nations A/66/599–S/2011/764

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General Assembly
Sixty-sixth session
Agenda item 83
The rule of law at the national and international levels

Security Council
Sixty-sixth year

Identical letters dated 8 December 2011 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General, the President of the General Assembly and the President of the Security Council

Upon instructions from my Government, I have the honour to draw your kind attention to the provocative and covert operations against the Islamic Republic of Iran by the United States Government, which have increased and intensified in recent months.

In the continuation of such trend, recently, an American RQ-170 unmanned spy plane, bearing a specific serial number, violated Iran's air space. This plane flew 250 kilometres deep into Iranian territory up to the northern region of the city of Tabas, where it faced prompt and forceful action by the Armed Forces of the Islamic Republic of Iran.

This is not the only act of aggression and covert operation by the United States against the Islamic Republic of Iran. In the past, the Iranian Government lodged its strong protests against similar acts by submitting several notes, including the notes dated 29 October 2008 and 11 February 2009 to the Government of the United States.

My Government emphasizes that this blatant and unprovoked air violation by the United States Government is tantamount to an act of hostility against the Islamic Republic of Iran in clear contravention of international law, in particular the basic tenets of the Charter of the United Nations. The Iranian Government expresses its strong protest over these violations and acts of aggression and warns against the destructive consequences of the recurrence of such acts. The Islamic Republic of Iran reserves its legitimate rights to take all necessary measures to protect its national sovereignty.

My Government hereby calls for the condemnation of such acts of aggression and requests for clear and effective measures to be taken to put an end to these dangerous and unlawful acts in line with the United Nations responsibilities to maintain international and regional peace and security, in accordance with the letter and spirit of the Charter of the United Nations.

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It would be appreciated if the present letter could be circulated as a document of the General Assembly, under agenda item 83, and of the Security Council.

(*Signed*) Mohammad **Khazaee**
Ambassador
Permanent Representative

United Nations A/66/600

General Assembly

Distr.: General
9 December 2011

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Sixty-sixth session
Agenda items 129, 144 and 145

International residual mechanism for criminal tribunals

Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Second performance reports for the biennium 2010-2011 and proposed budgets for the biennium 2012-2013 of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia and proposed budget for the International Residual Mechanism for Criminal Tribunals for the biennium 2012-2013

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the proposed budgets for the biennium 2012-2013 for the International Criminal Tribunal for Rwanda (A/66/368) and the International Tribunal for the Former Yugoslavia (A/66/386). It has also considered the second performance reports for the biennium 2010-2011 of the International Criminal Tribunal for Rwanda (A/66/557 and Corr.1) and the International Tribunal for the Former Yugoslavia (A/66/555). In addition, the Advisory Committee considered the proposed budget for the International Residual Mechanism for Criminal Tribunals

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for the biennium 2012-2013 (A/66/537). During its consideration of these reports, the Committee met with representatives of both Tribunals and the Office of Legal Affairs, who provided additional information and clarification.

2. The Advisory Committee has considered these reports together in order to address cross-cutting issues concerning the Tribunals and the transition process to the International Residual Mechanism.

II. Cross-cutting issues

A. Staff retention

3. In its resolutions 59/273 and 59/274, the General Assembly requested the Secretary-General to make every effort to reduce the vacancy rate and improve staff retention at the Tribunals, including by extending contracts of staff performing functions that are central to the implementation of the completion strategies beyond the period of the current budget. In its latest resolutions on staff retention, 64/239, 65/252 and 65/253, the Assembly requested the Secretary-General to utilize his authority under the existing contractual framework to offer contracts to staff of the Tribunals, and to explore the possibility of employing at the United Nations staff who remain with the Tribunals until the completion of their mandates.

4. Upon enquiry, the Advisory Committee was informed that although to date staff of the Tribunals have not been issued contracts that extend beyond the budget cycle, and no measures have been put in place for the United Nations to absorb Tribunal staff who remain until the completion of the mandates, other flexible measures regarding the recruitment and retention of staff have been put in place. These include extension of contracts beyond retirement age, payment of special post allowance and early repatriation. The Committee was informed that despite the use of such measures, the attrition rate of staff remains unchanged, and staff members, particularly the most experienced and long-serving staff members, continue to leave employment at the Tribunals for more stable and long-term employment elsewhere.

5. The Advisory Committee recalls that it previously commented on the issue of staff retention with respect to the Tribunals in its report A/62/734, which contained recommendations on staff retention measures. Some of these recommendations were subsequently endorsed by the General Assembly in its resolution 63/256. **The Committee encourages the Tribunals to continue their efforts to recruit and retain sufficient staff to ensure the timely completion of their mandates.**

B. Lump-sum legal aid system

6. Both Tribunals use a lump-sum legal aid policy for pretrial and trial phases of a case. The Advisory Committee was informed that at the appellate level, the International Criminal Tribunal for Rwanda also utilizes the lump-sum policy, while the International Tribunal for the Former Yugoslavia is in the process of reviewing its appeals legal aid system. The Committee notes from the supplementary information provided to it that the International Criminal Tribunal for Rwanda estimates requirements in the amount of $7,273,000 for defence counsel fees and related costs during the biennium 2012-2013. The Committee was informed that the

defence workload of the International Criminal Tribunal for Rwanda comprises the completion of trials, appeals, preservation of evidence hearings and contempt of court proceedings.

7. With respect to the International Tribunal for the Former Yugoslavia, the Advisory Committee notes from the supplementary information provided to it that an amount of $15,085,600 will be required for the provision of defence counsel to an average of 34 accused persons who will be the subject of trial and appellate proceedings at the Tribunal during the biennium 2012-2013. Upon enquiry, the Committee was informed that $7,955,600 of that amount related to trials and $7,130,000 to appeals. The Committee was also informed, upon enquiry, that the Tribunal was currently reviewing the appeals legal aid system and would discuss the findings of its review with the professional association representing the interests of the defence counsel at the Tribunal. Since the lump-sum scheme had not yet been finalized, the budget for 2012-2013 had been prepared on the basis of the existing arrangements for remunerating defence counsel for appeals.

8. **In the Advisory Committee's view, the lump-sum system of both Tribunals provides greater predictability in defence counsel costs, facilitates and streamlines the legal aid process and may also lead to savings. Accordingly, the Committee encourages the International Tribunal for the Former Yugoslavia to extend the existing scheme to cover the appeals stage.**

III. International Criminal Tribunal for Rwanda

A. Completion strategy and status of trial-related activities

9. By its resolution 1966 (2010), the Security Council requested both Tribunals to take all possible measures to expeditiously complete all their remaining work as provided by the resolution no later than 31 December 2014, to prepare their closure and ensure a smooth transition to the International Residual Mechanism. The Advisory Committee notes that the Tribunal will transition to the International Residual Mechanism on 1 July 2012, with most of its functions being transferred to the Mechanism on that date.

10. Pursuant to its completion strategy, the Tribunal has almost completed all its work at the trial level (see A/66/368, para. 4). The Tribunal had previously projected in its budget for the biennium 2010-2011 that all first-instance trials would be completed by 30 June 2011, but it is now indicated that the pace of work has not matched this projection (see A/66/368, para. 7).

11. The Secretary-General states that during the biennium 2010-2011, from 1 January 2010 to 4 November 2011, the Trial Chambers of the Tribunal rendered 10 judgements involving 21 accused and heard evidence in four other trials of five accused. One request for referral to Rwanda was approved and two new trials commenced. The Appeals Chamber rendered 9 appeal judgements concerning nine persons, 15 interlocutory appeal decisions, 18 decisions on review and other requests, and 250 pre-appeal orders and decisions. In addition, the Appeals Chamber heard three appeal cases in respect of four persons. The Prosecutor filed motions for the preservation of evidence for a future trial in the cases of three fugitives (see A/66/557, annex II, paras. 1, 2 and 4).

12. Although the Tribunal will transition to the International Residual Mechanism on 1 July 2012, it is mandated to complete all trial or referral proceedings that are pending with it as of the commencement date of the Mechanism, in addition to other ongoing functions, including preparations for the transition to the Mechanism (see Security Council resolution 1966 (2010), annex 2).

13. The Advisory Committee was informed that during the biennium 2012-2013, projected activities include three contempt-of-court trials and two genocide trials, if the referrals of the two genocide cases to Rwanda are unsuccessful. The Tribunal expects to render judgement in four other trials involving five accused, and conduct at least 40 appeals in eight cases. Other ongoing tasks include three motions for the preservation of evidence; the tracking of nine fugitives prior to the handover to the International Residual Mechanism; preparation of case files against six fugitives whose cases are earmarked for referral to national jurisdictions; and review of 500 witness protection orders (see annex I).

14. The Advisory Committee notes that the Prosecutor's efforts to find willing national jurisdictions to accept the referral of cases from the Tribunal have so far been unsuccessful (see A/66/368, para. 15). **The Committee recommends that the Tribunal intensify its outreach efforts in this regard, in order to ensure the successful referral of cases to national jurisdictions.**

15. With respect to archiving, the Advisory Committee was informed that the Tribunal has completed the digitization of the audio-visual records. It has also redacted more than 3,000 hours of audio-visual material and archived approximately 1,500 linear metres of paper records. The Tribunal informed the Committee that although the International Residual Mechanism will commence its archives management function on 1 July 2012, not all archives will be transferred to its custody on that date; instead, the migration of the custody of the records will take place in a phased manner. This approach takes into account the size of the archives and the fact that the archives will continue to be added to until the completion of the Tribunal's mandate as its ongoing operations during the biennium will generate additional records.

16. The Tribunal proposes to retain 416 posts during the biennium, in addition to seeking funding through general temporary assistance for 41 Professional and 213 General Service positions for between 6 and 24 months each. More details concerning the post and non-post resources requested are contained in paragraphs 26 to 30 below.

B. Second performance report for the biennium 2010-2011

17. In its resolution 65/252, the General Assembly approved a revised appropriation to the Special Account for the International Criminal Tribunal for Rwanda of a total amount of $257,804,100 gross ($235,327,400 net) for the biennium 2010-2011.

18. The final requirements for 2010-2011 are projected at $257,081,500 gross ($233,691,800 net), reflecting a reduction of $722,600 gross ($1,635,600 net) compared with the revised appropriation for the biennium 2010-2011. This reduction is attributable to decreases in post incumbency and other changes, partially offset by additional requirements for changes with respect to the combined effect of exchange rates and inflation, as set out in table 1 below.

Table 1
Projected expenditure by object of expenditure and main determining factor
(Thousands of United States dollars)

Object of expenditure	*Revised appropriation*	*Projected changes*				*Proposed final appropriation*
		Rate of exchange	*Inflation*	*Post incumbency and other changes*	*Total*	
Expenditure						
Posts	134 461.5	(1 265.6)	2 515.4	2 911.4	4 161.2	138 622.7
Other staff costs	42 670.3	(670.6)	312.1	2 769.4	2 410.9	45 081.2
Salaries and allowances of judges	10 710.9	(29.9)	7.3	(7.4)	(30.0)	10 680.9
Consultants	318.6	(1.3)	(0.9)	(28.5)	(30.7)	287.9
Travel of representatives	761.8	—	10.4	(9.8)	0.6	762.4
Travel	4 257.6	—	37.2	76.9	114.1	4 371.7
Contractual services	21 602.2	(138.5)	(15.1)	(7 907.6)	(8 061.2)	13 541.0
General operating expenses	12 543.5	(121.8)	(6.7)	(1 140.8)	(1 269.3)	11 274.2
Hospitality	7.5	(0.1)	—	0.1	—	7.5
Supplies and materials	2 384.2	(22.1)	4.3	2.5	(15.3)	2 368.9
Furniture and equipment	2 892.9	(37.3)	14.1	858.7	835.5	3 728.4
Improvement of premises	313.4	(2.7)	0.3	501.7	499.3	812.7
Grants and contributions	2 403.0	—	—	(250.7)	(250.7)	2 152.3
Staff assessment	22 476.7	(129.3)	184.6	857.7	913.0	23 389.7
Total expenditure (gross)	**257 804.1**	**(2 419.2)**	**3 063.0**	**(1 366.4)**	**(722.6)**	**257 081.5**
Income						
Staff assessment	22 476.7	(129.3)	184.6	857.7	913.0	23 389.7
Total requirements (net)	**235 327.4**	**(2 289.9)**	**2 878.4**	**(2 224.1)**	**(1 635.6)**	**233 691.8**

19. Upon enquiry, the Advisory Committee was informed that total appropriations for the Tribunal from its inception in 1995 through the biennium 2010-2011 amount to approximately $1.7 billion (see also para. 51 below). As at 31 December 2010, unpaid contributions totalled $12,017,846. To date, unpaid contributions for prior periods stand at $3,758,654. A total amount of $125,009,420 was assessed for 2011, of which $9,975,913 remains outstanding.

20. The Advisory Committee notes that the Registry's travel expenses are estimated to have decreased by $172,900 owing to improved management of the travel schedules of protected witnesses, combined travel missions and the use of United Nations aircraft (see A/66/557, para. 17). **The Committee welcomes this approach and recommends that the Tribunal continue to explore ways to achieve savings and improve efficiency.**

21. With respect to other staff costs for records management and archives, the Tribunal projects an overexpenditure of $791,700, owing to an underestimation of the requirements and lack of information as to the magnitude of the task, which the Secretary-General indicates led to under-budgeting (see A/66/557, para. 21). **Given that archiving will continue to be a major activity for the Tribunal, the Advisory Committee requests that the Tribunal ensure that the resource**

requirements needed for future archival projects are accurately budgeted during the biennium to which they relate to prevent further instances of overexpenditure in subsequent bienniums.

C. Proposed budget for the biennium 2012-2013

22. The estimated resource requirements for the biennium 2012-2013 amount to $174,318,200 gross ($157,938,900 net) before recosting, representing a decrease of $83,485,900 gross or 32.4 per cent ($77,388,500 net or 32.9 per cent) compared with the revised appropriation for the biennium 2010-2011. The total proposed resource requirements, after recosting, amount to $183,324,900 gross ($166,527,700 net). **The Advisory Committee recognizes the improved quality in the presentation of the Tribunal's proposed budget, which contains clear information on the estimated costs and proposed staffing changes for the biennium, and encourages the Tribunal in the continued improvement of its budget presentation.**

23. The proposed requirements comprise: (a) $8,285,800 for the Chambers; (b) $38,380,900 for the Office of the Prosecutor; (c) $114,316,500 for the Registry; and (d) $13,335,000 for records management and archives. A summary of the resource requirements by object of expenditure under the assessed budget is provided in table 2 below.

Table 2
Requirements by object of expenditure
(Thousands of United States dollars)

Object of expenditure	*2008-2009 expenditure*	*2010-2011 appropriation*	*Resource growth*		*Total before recosting*	*Recosting*	*2012-2013 estimate*
			Amount	*Percentage*			
Posts	166 744.3	134 461.5	(33 948.0)	(25.2)	100 513.5	3 137.5	103 651.0
Other staff costs	26 814.1	42 670.3	(18 838.0)	(44.1)	23 832.3	2 647.6	26 479.9
Non-staff compensation	10 125.4	10 710.9	(3 104.9)	(29.0)	7 606.0	360.0	7 966.0
Consultants and experts	293.2	318.6	(76.2)	(23.9)	242.4	25.5	267.9
Travel of representatives	583.0	761.8	(82.0)	(10.8)	679.8	26.0	705.8
Travel of staff	12 217.1	4 257.6	(742.9)	(17.4)	3 514.7	118.9	3 633.6
Contractual services	30 278.1	21 602.2	(11 817.0)	(54.7)	9 785.2	989.4	10 774.6
General operating expenses	11 623.0	12 543.5	(5 912.3)	(47.1)	6 631.2	798.6	7 429.8
Hospitality	4.4	7.5	—	—	7.5	0.9	8.4
Supplies and materials	2 974.5	2 384.2	(504.6)	(21.2)	1 879.6	221.8	2 101.4
Furniture and equipment	2 427.8	2 892.9	(1 362.7)	(47.1)	1 530.2	200.6	1 730.8
Improvement of premises	192.9	313.4	203.1	64.8	516.5	62.0	578.5
Grants and contributions	2 825.6	2 403.0	(1 203.0)	(50.1)	1 200.0	—	1 200.0
Staff assessment	24 822.9	22 476.7	(6 097.4)	(27.1)	16 379.3	417.9	16 797.2
Total expenditure (gross)	**291 926.3**	**257 804.1**	**(83 485.9)**	**(32.4)**	**174 318.2**	**9 006.7**	**183 324.9**
Income							
Income from staff assessment	24 822.9	22 476.7	(6 097.4)	(27.1)	16 379.3	417.9	16 797.2
Total requirements (net)	**267 103.4**	**235 327.4**	**(77 388.5)**	**(32.9)**	**157 938.9**	**8 588.8**	**166 527.7**

24. The Advisory Committee was informed that the Tribunal also receives extrabudgetary funding that has been utilized towards an outreach programme, including capacity-building of judicial and academic institutions and the publication of the first cartoon book on the Rwandan genocide entitled *100 Days in the Land of the Thousand Hills*. The Committee notes from the supplementary information provided to it that to date, cash contributions to the voluntary fund of the Tribunal amount to $13,167,717. As the fund balance is now depleted and no financial commitments from Member States or donors have been received, the Tribunal does not anticipate mobilizing extrabudgetary resources for ongoing projects (see A/66/368, para. 26). **The Committee recommends that the Tribunal reinvigorate its outreach to Member States and donors to replenish the voluntary fund in order to continue its important capacity-building projects.**

1. Posts

25. The Tribunal proposes to retain 416 posts during the biennium, representing a decrease through abolition of 212 posts (or 33.8 per cent) over the current authorized staffing level of 628 (see A/66/368, para. 20). The decrease reflects the reduction in activities as tasks are accomplished and transition to the International Residual Mechanism takes place. The Advisory Committee notes from the supplementary information provided to it that the requested 416 posts comprise 165 Professional level posts and 251 General Service and Other level posts.

26. As indicated in table 2 above, resource requirements proposed under posts amount to $100,513,500, before recosting, reflecting a decrease of $33,948,000, or 25.2 per cent, compared with the 2010-2011 appropriation of $134,461,500.

2. Non-post resources

27. Resource requirements under other staff costs, including general temporary assistance, are estimated at $23,832,300, before recosting, reflecting a reduction of $18,838,000, or 44.1 per cent, in comparison with the 2010-2011 appropriation of $42,670,300.

28. A provision of $22,110,700 is sought under general temporary assistance to fund 41 Professional and 213 General Service positions, for between 6 and 24 months each, to manage the remaining workload and the upcoming transition. The Advisory Committee recalls that posts were recommended for abolition in the biennium 2010-2011 in anticipation of a decreased workload owing to the completion of all first-instance trials. However, the Secretary-General states that unexpected circumstances, such as the arrest of three fugitives, have caused an increase in the actual workload (see A/66/368, paras. 11 and 12). These posts funded under general temporary assistance would allow the Tribunal to have flexibility in accelerating or decelerating the phasing out of individual posts while maintaining critical functions during the final stage of the completion process (see A/66/368, para. 21).

29. Under contractual services, which includes defence counsel fees and related costs, requirements are projected at $9,785,200, before recosting, representing a decrease of $11,817,000, or 54.7 per cent, compared with the 2010-2011 appropriation of $21,602,200. The Advisory Committee notes from the supplementary information provided to it that the decrease is due largely to lower requirements for defence counsel fees as a result of reduced trial activity.

D. Conclusions and recommendations

30. **The Advisory Committee recommends that the General Assembly take note of the second performance report and approve the final appropriation for the biennium 2010-2011 in the amount of $257,081,500 gross ($233,691,800 net) to the Special Account for the International Criminal Tribunal for Rwanda.**

31. **The Advisory Committee also recommends approval of the resource requirements outlined in the proposed budget for the biennium 2012-2013 for the International Criminal Tribunal for Rwanda.**

IV. International Tribunal for the Former Yugoslavia

A. Completion strategy and status of trial-related activities

32. As indicated in paragraph 3 of the report of the Secretary-General on the proposed budget for the International Tribunal for the Former Yugoslavia (A/66/386), the completion strategy of the Tribunal, endorsed in July 2002 by a statement of the President of the Security Council (S/PRST/2002/21), set 31 December 2004 for the conclusion of all new investigations, 31 December 2008 for the completion of all first-instance trials and 31 December 2010 for the completion of appeals. Pursuant to Council resolution 1534 (2004), the President and Prosecutor of the Tribunal are required to provide to the Council, every six months, an assessment of the progress made towards implementation of the completion strategy. The last such report (S/2011/316) was submitted in May 2011. In its resolution 1966 (2010), the Council noted that the envisaged completion strategy dates had not been met, and requested the Tribunal to take all possible measures to expeditiously complete its remaining work no later than 31 December 2014. The Advisory Committee notes that the Tribunal is due to transition to the International Residual Mechanism (see section V below) on 1 July 2013.

33. The Advisory Committee notes that the first major milestone of the completion strategy has been met, with all investigations having been completed and the last new indictments confirmed by the Chambers at the end of 2004. As indicated in paragraph 5 of the report of the Secretary-General, the last two fugitives at large were arrested in 2011, meaning that the Tribunal has completed or will be completing proceedings in respect of all 161 persons indicted.

34. In his report on the proposed budget, the Secretary-General indicates that a total of 11 cases involving 28 persons, including a retrial, will have been heard by the Tribunal during the biennium 2010-2011. The verdicts in four trials, involving 12 accused, will have been delivered, two contempt judgements will have been rendered and a total of nine appeals on the merits, involving 23 convicted persons from the Tribunal, will have been heard (A/66/386, para. 26). It is estimated that, during the biennium 2012-2013, the Chambers will work on nine trials, including one partial retrial; 30 pre-appeal procedures; 11 appeals from final trial chamber judgements; and all interlocutory appeals arising from trials (ibid., para. 27). During that period, the Tribunal expects to issue judgements in six cases, involving 15 accused. It is currently anticipated that, barring any unanticipated developments, three trials will continue past the end of the biennium 2012-2013 (ibid., paras. 6 and 28). Upon enquiry, the Advisory Committee was informed that, as at November

2011, two cases were at the pretrial stage, seven cases were at the trial stage and six cases were before the Appeals Chamber.

35. According to the Secretary-General, the changes in the trial completion dates, as compared with the dates previously projected, are attributable to the late arrests of fugitives, the high rate of staff attrition, the discovery of important evidence while proceedings were ongoing, detainee health issues and other factors outside the control of the Tribunal (A/66/386, para. 6). The Advisory Committee notes from the report that the movement of trial completion dates will have an impact on the completion of appellate activity. In paragraph 11 of his report, the Secretary-General indicates that all cases on trial are expected to be appealed by one or more parties to the proceedings.

36. Upon enquiry, the Advisory Committee was provided with a projected forecast for all remaining pretrial, trial and appeal proceedings (see annex II). The Committee notes from the report of the Secretary-General, however, that it should be borne in mind that a number of external factors beyond the Tribunal's control can have a major impact on the anticipated completion dates of trials. Should the actual trial schedule vary significantly from that used for the formulation of the 2012-2013 budget proposal, the requirements would have to be reassessed and realigned and any additional requirements addressed in the context of the relevant performance reports (A/66/386, para. 7).

37. In paragraphs 9 and 10 of his report on the proposed budget, the Secretary-General describes the measures taken to ensure the expeditious completion of trials, which include conducting up to nine trials simultaneously and joining related indictments so as to conduct trials with multiple accused. The Tribunal has also introduced a number of reforms and measures aimed at enhancing the efficient conduct of proceedings without compromising due process. These include reducing the scope of indictments; assigning cases to the trial chamber most likely to try the case at the earliest possible stage; using agreed and adjudicated facts; admitting written evidence; strictly enforcing time limits on the parties; and discouraging duplicative evidence. The Advisory Committee also notes from paragraph 31 of the report of the Secretary-General that, during the biennium 2012-2013, the Chambers will continue to accommodate a high level of courtroom activity by maximizing the use of available resources through the operation of the three courtrooms over two daily shifts, exceeding normal working hours. In addition, where the health of the accused and the workload of the judges permit, many Chambers are holding extended sittings, beyond five hours per day.

38. On the administrative and support side, the Advisory Committee was informed that the Tribunal had established an Office of Documents Management to avoid duplicate translations; implemented lump-sum payments for defence counsel to rationalize the defence payment system (see also paras. 6-8 above); established an electronic disclosure system to enhance the efficiency of disclosures; set up a judicial database to bring the jurisprudence and entire case files of the Tribunal online; and introduced an e-court system to expedite the handling of court documents and the drafting of judgements. **The Committee commends the Tribunal for the measures it has taken to accelerate the pace and enhance the efficiency of its operations and encourages it to pursue further efforts in this regard.**

39. The Advisory Committee notes from paragraph 28 of the report of the Secretary-General that, in order to complete the first-instance trials expeditiously in all cases, it is anticipated that during the biennium 2012-2013 the Tribunal will require the continued services of 15 permanent and 9 ad litem judges. In addition, it is indicated in paragraph 12 of the report that, so as to ensure that the Appeals Chamber can deal with the significant increase in its workload during the biennium 2012-2013, the President of the Tribunal has recommended to the Security Council an increase in the composition of the Chamber from five to nine judges. Upon enquiry, the Committee was informed that the Statute of the Court had been amended to reflect the President's recommendation. The Committee was further informed that the increase would be achieved through redeployment from the Trial Chamber. In the same paragraph, the Secretary-General states that the proposed budget for 2012-2013 provides for the redeployment of legal staff to appeals, as and when first-instance trials are completed.

40. With regard to staffing levels, the Advisory Committee recalls that, in his proposed budget for the International Tribunal for the Former Yugoslavia for 2010-2011, the Secretary-General indicated that the Tribunal expected to undergo a phased reduction in staffing capacity during the biennium. At the beginning of the biennium, the total staffing of the Tribunal stood at 990 posts and positions, comprising 732 temporary posts and 258 positions funded under general temporary assistance. It was anticipated that, as trial activity decreased, a total of 399 posts and positions (186 temporary posts and 213 positions funded under general temporary assistance) would be progressively abolished over the two-year period (A/64/555, para. 36), leaving a total staffing complement of 591 posts and positions.

41. Upon enquiry, however, the Advisory Committee was informed that, as at 31 December 2011, the total staffing of the Tribunal would stand at 822 posts and positions, comprising 546 temporary posts and 276 positions funded under general temporary assistance. It is the Committee's understanding that the slippage in the trial schedule is responsible for the elimination of a lower-than-anticipated number of positions funded under general temporary assistance. As indicated in paragraph 21 of the proposed budget, for the biennium 2012-2013 the Secretary-General is proposing to retain all 546 temporary posts approved for the biennium 2010-2011. At the beginning of the biennium, the equivalent of 319 positions will be funded under general temporary assistance. The Secretary-General indicates that the Tribunal intends to gradually eliminate 163 of those positions during the biennium. The Committee has commented further on the use of general temporary assistance funding to continue the functions of posts that have been abolished in paragraphs 54 to 58 below.

42. The Advisory Committee notes that the referral of cases to national jurisdictions has been central to the Tribunal's completion strategy. Thus far, 10 accused have been transferred to the War Crimes Chamber of the Court of Bosnia and Herzegovina, two accused have been transferred to the authorities of Croatia and one accused to Serbia. No further referrals are envisaged during the biennium 2012-2013. In addition, a total of 17 investigative dossiers, involving 43 persons, have been transferred to national courts. While all dossier transfers were completed in 2010-2011, the Office of the Prosecutor will continue to provide legal support to national jurisdictions in the region (A/66/386, para. 14).

43. During the biennium 2012-2013, the Tribunal will also continue to be actively engaged in the transfer of judicial and prosecutorial know-how and in other capacity-building activities in the region of the former Yugoslavia, including running "train-the-trainer" programmes for domestic judicial and prosecutorial training professionals and improving national legal professionals' access to the Tribunal's records and archives. The Advisory Committee notes, in particular, that a project launched in 2010, with the support of the European Commission, which allowed visiting national prosecutors to spend time working in The Hague to review information and gain experience in prosecuting complex war crimes cases has proven very successful and, subject to continued funding, will be continued in 2012-2013 (A/66/386, para. 15). In addition, as part of efforts to preserve its legacy, the Tribunal, with sponsorship from the Government of the Netherlands and the School of Law of the University of California, Los Angeles, organized a conference designed to promote coordination and cooperation among various actors on the utilization of the Tribunal's legacy. Following the conference, the Tribunal prepared a report on its comprehensive legacy strategy, which was recently discussed at a second legacy conference convened in The Hague in November 2011 (ibid., para. 16). **The Committee recognizes the importance of capacity-building activities in the region and encourages the Tribunal to pursue them. The Secretary-General should provide updated information on those activities in his next budget submission.**

44. The Advisory Committee notes that two important activities for the Tribunal during the biennium 2012-2013 will be: (a) the preparation for the transition to the International Residual Mechanism (see section V below); and (b) the start-up of The Hague branch of the Mechanism in July 2013 (A/66/386, para. 8). In his report on the proposed budget, the Secretary-General indicates that the Tribunal, and in particular the Registry, will play a critical role in ensuring the coordinated transfer of functions to the Mechanism and the effective start-up of operations of The Hague branch.

45. The Advisory Committee notes, in particular, that during the biennium 2012-2013 the Registry of the Tribunal will work together with the registries of the International Residual Mechanism, once established, and of the International Criminal Tribunal for Rwanda to ensure that the transfer of functions and operations from the Tribunals proceeds in the most cost-efficient, effective and proactive manner. The Registry will also play an active role in assisting the Mechanism to develop its policies, procedures and structure, with a view to facilitating a smooth start-up of operations and ensuring the transfer of best practices and lessons learned (A/66/386, paras. 17 and 57).

B. Second performance report for the biennium 2010-2011

46. In its resolution 64/240, the General Assembly appropriated a total amount of $290,285,500 gross ($267,987,800 net) for the International Tribunal for the Former Yugoslavia. The approved budget was established on the basis of the trial schedule applicable at the time of its preparation and the related completion strategy, under which the Tribunal envisaged a decrease in trial activity and the phasing out of a total of 399 posts and positions over the course of the biennium. However, the Secretary-General indicates that unforeseen developments affected the trial schedule, meaning that the functions of some of the posts to be abolished were

required for longer than anticipated (see para. 41 above). Subsequently, after considering the first performance report for the biennium 2010-2011 (A/65/581), the Assembly approved a revised appropriation of $320,511,800 gross ($289,810,000 net) for the Tribunal for that period (see resolution 65/253).

47. As shown in table 1 of the second performance report (A/66/555), the final requirements for 2010-2011 are projected at $327,472,300 gross ($286,012,600 net), reflecting an increase of $6,960,500 gross (a net decrease of $3,797,400). The Advisory Committee notes that the estimate is based on actual expenditures for the first 19 months of the biennium, projected requirements for the last 5 months and changes in inflation, exchange rates and cost-of-living adjustments as compared with the assumptions made in the first performance report (ibid., para. 1).

48. The higher requirements reflect the combined effect of the impact of exchange rate fluctuations ($7,230,300) owing mainly to the weakening of the dollar vis-à-vis the euro during the period from November 2010 to October 2011 and the application of the October exchange rate for November and December 2011, and to increased requirements for inflation ($2,273,500) (A/66/555, para. 4). The increase is partially offset by reduced requirements owing to post incumbency and other changes ($2,543,300). The budgetary assumptions used in the preparation of the estimates are set out in annex I to the report of the Secretary-General.

49. The Advisory Committee notes, inter alia, that a reduction of $7,966,200 is projected under other staff costs in the Registry. According to the Secretary-General, the decrease is mainly attributable to reduced requirements under interpretation ($1,337,900); translation ($246,900); general temporary assistance ($6,132,200); and overtime and night differential ($195,800). With particular reference to the reduction under overtime and night differential, the Committee notes that it has been achieved through the continual and rigorous monitoring of requests for those allowances during the biennium (A/66/555, para. 12).

50. Upon enquiry, the Advisory Committee was informed that total appropriations for the International Tribunal for the Former Yugoslavia since inception amounted to approximately $1.8 billion. As at 31 December 2010, cumulative outstanding contributions totalled $15,426,734. Of that amount, $3,753,447 related to prior periods. A total amount of $160,586,317 was assessed in 2011, of which $17,434,702 was outstanding as at 5 December 2011.

C. Proposed budget for the biennium 2012-2013

51. The estimated resource requirements for the biennium 2012-2013 amount to $280,158,300 gross ($249,637,000 net) before recosting, reflecting a decrease of $40,353,500 gross, or 12.6 per cent ($40,173,000 net, or 13.9 per cent), as compared with the revised appropriation for the biennium 2010-2011. The decreased requirements reflect reductions under Chambers ($1,956,900), the Office of the Prosecutor ($13,254,100), the Registry ($23,968,600) and the records management and archives component ($1,173,900) owing mainly to the anticipated reduction in trial activity in 2013 (A/66/386, para. 20, and table 2). A summary of resource requirements by object of expenditure is provided in table 3 below:

Table 3
Resource requirements for the International Tribunal for the Former Yugoslavia by object of expenditure
(Thousands of United States dollars)

Object of expenditure	*2008-2009 expenditure*	*2010-2011 appropriation*	*Resource growth*		*Total before recosting*	*Recosting*	*2012-2013 estimate*
			Amount	*Percentage*			
Posts	131 796.5	119 217.2	(13 130.9)	(11.0)	106 086.3	(70.9)	106 015.4
Other staff costs	43 991.2	71 653.6	(13 792.5)	(19.2)	57 861.1	379.7	58 240.8
Non-staff compensation	16 233.3	14 175.9	(1 977.7)	(14.0)	12 198.2	77.1	12 275.3
Consultants	708.5	455.9	(1.2)	(0.3)	454.7	11.2	465.9
Experts	282.6	321.0	(78.6)	(24.5)	242.4	6.1	248.5
Travel of staff	5 260.0	4 490.2	(612.4)	(13.6)	3 877.8	141.4	4 019.2
Contractual services	64 740.6	47 224.8	(8 402.5)	(17.8)	38 822.3	983.2	39 805.5
General operating expenses	27 370.0	26 114.5	(217.0)	(0.8)	25 897.5	652.5	26 550.0
Hospitality	12.9	16.2	—	—	16.2	0.4	16.6
Supplies and materials	1 508.0	1 815.3	(331.9)	(18.3)	1 483.4	37.5	1 520.9
Furniture and equipment	3 491.3	4 071.9	(1 468.7)	(36.1)	2 603.2	63.6	2 666.8
Improvement of premises	266.8	240.6	102.8	42.7	343.4	9.0	352.4
Grants and contributions	40.1	290.4	(240.4)	(82.8)	50.0	—	50.0
Staff assessment	42 040.1	30 424.3	(202.5)	(0.7)	30 221.8	437.9	30 659.7
Total (gross)	**337 741.9**	**320 511.8**	**(40 353.5)**	**(12.6)**	**280 158.3**	**2 728.7**	**282 887.0**
Income							
Income from staff assessment	42 040.1	30 424.3	(202.5)	(0.7)	30 221.8	437.9	30 659.7
Other income	292.7	277.5	22.0	7.9	299.5	—	299.5
Total (net)	**295 409.1**	**289 810.0**	**(40 173.0)**	**(13.9)**	**249 637.0**	**2 290.8**	**251 927.8**

52. The Advisory Committee notes that estimated extrabudgetary resources for the biennium 2012-2013 amount to $1,739,300, down from an estimated $3,320,100 for the biennium 2010-2011. The Secretary-General indicates that those resources will be used for a variety of activities related to supporting the work of the Office of the Prosecutor and the Registry. The estimated level of extrabudgetary resources is expected to decrease because several projects have been completed (A/66/386, para. 23 and table 2).

1. Posts

53. For the biennium 2012-2013, the Secretary-General is proposing to retain all the 546 temporary posts approved for the biennium 2010-2011. He recalls, in paragraph 21 of his report on the proposed budget, that during the bienniums 2008-2009 and 2010-2011 a total of 444 posts were gradually abolished (258 as at 1 January 2009 (see A/62/578, para. 12), a further 35 as at 1 January 2010 and the remaining 151 as at 1 January 2011 (see A/64/476, para. 18)). The Secretary-General asserts that, in view of the slippage in the trial schedule, the functions of some of the abolished posts need to be maintained for longer than originally anticipated. Accordingly, at the beginning of the biennium 2012-2013, the equivalent of 319 positions will be funded under

general temporary assistance. During the course of the biennium, 163 of those positions will be gradually eliminated. The Advisory Committee was provided, upon request, with a table illustrating the phasing out of positions funded under general temporary assistance during the biennium 2012-2013 (see annex III).

54. Upon enquiry, the Advisory Committee was informed that the use of general temporary assistance funding to continue the functions of abolished temporary posts had begun in the biennium 2008-2009 with a view to ensuring that the Tribunal had the flexibility to accelerate or decelerate the phasing out of those posts. The Committee was provided with the following table illustrating the use of general temporary assistance funding over the last three bienniums and the proposals for the biennium 2012-2013:

	1 January 2006	*31 December 2007*	*1 January 2008*	*31 December 2009*	*1 January 2010*	*31 December 2011*	*1 January 2012*	*31 December 2013*
Temporary posts	990	990	990	732	697	546	546	546
Positions funded under general temporary assistance to maintain the functions of abolished posts	—	—	—	258	267	276	319	156
Other positions funded under general temporary assistance	128	106	110	110	85	66	89	50
Total	**1 118**	**1 096**	**1 100**	**1 100**	**1 049**	**888**	**954**	**752**

55. The Advisory Committee notes from the table above that the proposed number of positions funded under general temporary assistance to maintain the functions of abolished posts will increase from 276 to 319 between the end of the biennium 2010-2011 and the beginning of the biennium 2012-2013. Upon enquiry, the Committee was informed that the budget for 2010-2011 did not include any dedicated resources to support the trials of the last two fugitives, because they were still at large when the estimates were prepared. Those individuals had been arrested in mid-2011 and their trials were due to start in 2012. The increase in the number of positions funded under general temporary assistance was directly attributable to the additional workload connected with those trials.

56. **The Advisory Committee considers that the presentation of the Secretary-General's staffing proposals in the proposed budget is not clear. While table 3 of the report sets out the proposed post requirements, it is not immediately apparent from the narrative that the total proposed staffing component, including positions funded under general temporary assistance, is much higher. The Committee recommends that, in future budget proposals for the Tribunal, if general temporary assistance funding is proposed to continue the functions of abolished posts, the Secretary-General should include a table similar to the one above illustrating the full quantum of human resources proposed for the biennium.**

57. **The Advisory Committee understands the purpose of using general temporary assistance funding to continue the functions of posts that are to be gradually abolished over the course of the biennium, namely to allow for more accurate and responsive budgeting, as well as greater flexibility to adjust staffing levels. The Committee is concerned, however, that the total staffing levels at the**

Tribunal have not decreased significantly since the biennium 2006-2007. The Committee is also concerned that the increase in the number of general temporary assistance positions at the beginning of the biennium 2012-2013 was not flagged or explained in the budget document. While the downsizing of the Tribunal does, to a certain extent, depend on factors beyond its control, the Committee believes that greater efforts should be made to streamline the staffing structure. The Committee therefore recommends that the General Assembly request that the Secretary-General explore options for accelerating the abolition of positions funded under general temporary assistance and report on the results of his efforts in the performance reports for the biennium 2012-2013.

58. As shown in table 3 above, total proposed resource requirements for posts for the biennium 2012-2013 amount to $106,086,300 before recosting, representing a decrease of $13,130,900, or 11 per cent, as compared with the revised appropriation for 2010-2011. The Secretary-General indicates that the decrease is due to the delayed impact of 49 temporary posts in the Office of the Prosecutor and 102 temporary posts in the Registry that were abolished only in the second year of the biennium 2010-2011 (A/66/386, paras. 49 and 64; see also para. 54 above). **The Advisory Committee regrets that the budget document does not contain information justifying the continued need for all 546 temporary posts during the biennium 2012-2013. The Committee expects that the staffing table for the biennium 2014-2015 will reflect a significant reduction in temporary posts, given that the bulk of the Tribunal's trial work will have been completed and that the International Residual Mechanism will have taken over many of its functions.**

2. Non-post resources

Other staff costs

59. Under other staff costs, the Secretary-General estimates that resources in the amount of $57,861,100 before recosting will be required for the biennium 2012-2013, a decrease of $13,792,500, or 19.2 per cent, as compared with the revised appropriation for 2010-2011 (see table 3 above). From the supplementary information provided to it, the Advisory Committee notes that, of the total resources requested under other staff costs, general temporary assistance funding in the amount of $18,026,100, corresponding to a total of 2,064 work months, will be required for the Office of the Prosecutor to continue to the functions of posts abolished during the biennium 2012-2013. A further amount of $24,337,600, corresponding to a total of 3,357 work months, will be required for the same purpose in the Registry. The Committee has commented in more detail on the use of general temporary assistance funding in paragraphs 54 to 58 above.

Travel of staff

60. As indicated in table 3 above, total requirements for travel of staff are estimated at $3,877,800 before recosting, a decrease of $612,400, or 13.6 per cent, as compared with the requirements for the biennium 2010-2011. The Advisory Committee notes from the supplementary information provided to it that the bulk of those resources ($3,150,600) will be used by the Registry for the following activities:

(a) Travel of staff in connection with judicial activities and to support field operations ($601,800). The estimates are based on the assumption that 312 missions will take place during the biennium ($573,499). Provision is also made for the travel of staff of the Office of Internal Oversight Services in connection with the audit of the Tribunal ($28,400);

(b) Travel of victims and witnesses, support persons and dependants and associated accommodation and communications costs ($2,548,800). It is anticipated that 660 witnesses will travel to The Hague during the biennium for hearings and trials. Fifty of those witnesses are eligible to be accompanied by a support person, bringing the basis for the estimate to 710 persons. It is estimated that transportation costs to and from The Hague, as well as travel documents, will amount to $950 per person; accommodation and meals will amount to an average cost of $238 per person per day for an average of 7 days in 2012 and 10 days in 2013; and a witness allowance for incidental expenses will amount to $42 per day. In addition, the estimates include a provision in the amount of $211,500 for escorting witnesses, calculated on the basis of 49 two-week trips at $4,317 per trip. The Secretary-General indicates that staff of the Victims and Witnesses Section are required to escort high-risk witnesses from their homes to the courts and back again. This task involves not only physically escorting the witnesses but also liaison with national and local authorities in the region to ensure that witnesses are put under the least possible stress.

61. The Advisory Committee notes the reduction in travel costs as compared with the previous biennium. **The Committee takes the view, however, that further efforts should be made to achieve efficiencies under this budget line, in particular through the consolidation of trips wherever possible.**

General operating expenses

62. The Advisory Committee notes from the supplementary information provided to it that, under general operating expenses, there is an increase of $853,500 for rental of premises. Upon enquiry, the Committee was informed that the increase was attributable to the inclusion in the provision for rental of premises of the costs related to the amortization of expenditures to be incurred by the landlord in connection with the refurbishment of the main building. The refurbishment was being undertaken in order to ensure the safe and reliable functioning of the premises for the remainder of the Tribunal's lifetime. Additional requirements are also included for the provision of accommodation to Security Officers stationed in field locations.

3. Other issues

Archives and records management

63. As indicated in paragraph 69 of the report of the Secretary-General (A/66/386), under the provisions of Security Council resolution 1966 (2010), the records and archives functions of both Tribunals will be transferred to the International Residual Mechanism during the biennium 2012-2013. The budgets for the International Tribunal for the Former Yugoslavia and the Mechanism have been prepared on the assumption that the transfer of the management of the archives will take place as of 1 July 2012. Accordingly, the resource requirements for the archives component of the budget of the Tribunal cover only the first six months of the biennium. The

Advisory Committee notes, however, that the budget does contain provisions relating to backlog projects until the end of the biennium. In table 11 of his report, the Secretary-General states that total resources required for the biennium 2012-2013 for records management and archives amount to $2,588,200 before recosting, reflecting a decrease of $1,359,400 as compared with the requirements for the preceding biennium. Upon enquiry, the Committee was informed that the Office of the Prosecutor had already begun working closely with archives staff in order to ensure the smooth transfer of relevant material, which included approximately 9.8 million pages of documentation and 12,000 audio and video tapes to the Mechanism.

D. Conclusion and recommendations

64. **The Advisory Committee recommends that the General Assembly take note of the second performance report and approve the final appropriation for the biennium 2010-2011 in the amount of $327,472,300 gross ($286,012,600 net) to the Special Account for the International Tribunal for the Former Yugoslavia.**

65. **The Advisory Committee also recommends approval of the resource requirements outlined in the proposed budget for the biennium 2012-2013 for the International Tribunal for the Former Yugoslavia, bearing in mind the observations and recommendations set out in the paragraphs above.**

V. International Residual Mechanism for Criminal Tribunals

66. By its resolution 1966 (2010), the Security Council established the International Residual Mechanism for Criminal Tribunals to continue the jurisdiction, rights, obligations and essential functions of the Tribunals. The branch for the International Criminal Tribunal for Rwanda (Arusha branch) commences operations on 1 July 2012; the branch for the International Tribunal for the Former Yugoslavia (The Hague branch) on 1 July 2013. Annex IV of the present report provides the timeline for the transfer of functions from the Tribunals to the Mechanism.

67. In accordance with the above-cited resolution, the Mechanism will function for an initial period of four years after which its progress will be reviewed. Annex 2 of the resolution sets out the separate competence of the Tribunals and the Mechanism in core functions during the transition period. With respect to trials, the Tribunals have competence in cases of fugitives arrested more than 12 months prior to the commencement date of the respective branch; where arrested 12 months or less, the Mechanism has competence. On appeals, the Tribunals have competence where the notice of appeal is filed prior to the commencement date of the respective branch; if filed on or after the commencement date, the Mechanism has competence.

68. Two main objectives underpin the Mechanism's activities during the biennium 2012-2013: (a) the commencement of operations on the basis of a coordinated transfer of the Tribunals' functions and operations; and (b) the effective and efficient implementation of its residual functions (see A/66/537, para. 3).

69. The Advisory Committee was informed that start-up activities for the Mechanism have begun, including negotiations for headquarters agreements with the Governments of the Netherlands and the United Republic of Tanzania, the

submission of the list of judicial nominations to the Security Council, and the ongoing review by the Council of the draft rules of procedure and evidence of the Mechanism. The Committee notes that the General Assembly has issued the list of judicial candidates established by the Council and has set out the procedure for the upcoming election of judges (A/66/571).

70. With respect to the size of the Mechanism, the Security Council emphasized that the Mechanism should be a small, temporary and efficient structure, with a small number of staff commensurate with its reduced functions (see Security Council resolution 1966 (2010)).

71. The Mechanism will coexist with both Tribunals during the biennium 2012-2013, allowing the three entities to share resources, provide mutual support and coordinate beneficially (see A/66/386, para. 17). The resources requested for the biennium 2012-2013, before recosting, amount to $50,434,400 gross ($46,827,900 net). The requirements by object of expenditure are set out in table 4, below.

Table 4
Requirements by object of expenditure
(Thousands of United States dollars)

Assessed budget

Object of expenditure	*Total before recosting*	*Recosting*	*2012-2013 estimate*
Posts	9 765.2	116.0	9 881.2
Other staff costs	16 759.5	2 059.1	18 818.6
Non-staff compensation	3 118.1	385.9	3 504.0
Consultants	131.1	16.1	147.2
Travel of representatives	293.6	10.8	304.4
Travel of staff	2 205.6	82.1	2 287.7
Contractual services	3 915.1	476.5	4 391.6
General operating expenses	3 432.0	360.4	3 792.4
Supplies and materials	452.3	56.1	508.4
Furniture and equipment	1 008.4	124.7	1 133.1
Improvement of premises	5 520.0	683.2	6 203.2
Grants and contributions	227.0	—	227.0
Staff assessment	3 606.5	246.1	3 852.6
Total expenditure (gross)	**50 434.4**	**4 617.0**	**55 051.4**
Income			
Income from staff assessment	3 606.5	246.1	3 852.6
Total requirements (net)	**46 827.9**	**4 370.9**	**51 198.8**

72. The Advisory Committee notes that the Mechanism will engage in two main types of activities — continuous and ad hoc (see A/66/537, para. 7). The Committee was informed that the proposed budget comprises $21.6 million for continuous activities and $28.8 million for ad hoc activities.

73. Continuous activities include witness protection, tracking of fugitives, supervision of enforcement of sentences, archives management and assistance to national prosecution authorities (see A/66/537, para. 8). It is proposed that staffing for continuous activities comprise 97 posts. During the biennium 2012-2013, the establishment of 67 posts is requested, while the 30 remaining posts would be covered through the "double-hatting" of existing staff of both Tribunals. Under double-hatting arrangements, existing staff of the Tribunals would perform functions related to the operations of the Mechanism in addition to their current functions at the Tribunals, at no additional cost. Table 5 below shows the distribution of the 67 requested posts.

Table 5
Post requirements

Category	*January 2012*	*July 2012*	*July 2013*	*Total 2012-2013*
Professional and higher				
Arusha branch				
P-5	—	2	—	2
P-4/3	2	17	—	19
P-2/1	—	5	—	5
Subtotal	**2**	**24**	**—**	**26**
The Hague branch				
P-5	1	—	1	2
P-4/3	—	6	4	10
P-2/1	—	1	—	1
Subtotal	**1**	**7**	**5**	**13**
Total Professional and higher	**3**	**31**	**5**	**39**
General Service and other				
Arusha branch				
Other level	—	12	—	12
Security Service	—	1	—	1
Local level	—	5	—	5
Subtotal	**—**	**18**	**—**	**18**
The Hague branch				
Other level	—	5	5	10
Security Service	—	—	—	—
Local level	—	—	—	—
Subtotal	**—**	**5**	**5**	**10**
Total General Service and other	**—**	**23**	**5**	**28**
Grand total	**3**	**54**	**10**	**67**

74. The 30 double-hatted posts are distributed as follows: 19 for The Hague branch, 7 for the Arusha branch and 4 posts common to both branches (see A/66/537, page 27, Organization chart).

75. Ad hoc activities consist primarily of the conduct of trials and appeals and preparatory activities for the Mechanism (see A/66/537, para. 9). The Advisory Committee notes from the supplementary information provided to it that no ad hoc activities are envisaged for The Hague branch. However, the Committee was informed that trials, appeals and other judicial activities are projected for the Arusha branch, and funding through general temporary assistance is requested in respect of 154 positions for an average of 12 months to carry out these ad hoc activities (see A/66/537, para. 18).

76. Resources will be shared by the Tribunals and the Mechanism, particularly through double-hatting and common services, to provide mutual support and ensure cooperation (see A/66/537, para. 2). Upon enquiry as to the details of economies of scale and efficiencies achieved through resource-sharing, the Advisory Committee was informed that the proposed budget contains reduced post requirements owing to double-hatting arrangements and the provision of administrative support by the Tribunals; reduced or no requirements for premises, utilities and other infrastructure costs through co-location; and reduced or no requirements for furniture and equipment costs through sharing of the Tribunals' existing furniture and equipment. **The Committee notes the efforts made in proposing shared resources but considers that more could have been done to lower costs and to establish a smaller, more cost-effective structure for the Mechanism in accordance with Security Council resolution 1966 (2010). The Committee encourages the Secretary-General to ensure that the Mechanism utilizes further cost-saving measures, including increased use of double-hatting arrangements and increased sharing of premises and other common services, and expects the next proposed budget to reflect further savings through increased resource-sharing.**

77. Of the 30 proposed double-hatted posts, 2 are allocated for the Prosecutor and Registrar of the Mechanism. It is proposed that these positions would be filled by one of the two incumbents of these positions at the two Tribunals, in accordance with article 7 (a) of annex 2 of Security Council resolution 1966 (2010). The Advisory Committee notes that article 14.4 of the statute of the Mechanism provides that the terms and conditions of service of the Prosecutor shall be those of an Under-Secretary-General of the United Nations. Article 15.3 of the statute provides that the terms and conditions of service of the Registrar shall be those of an Assistant Secretary-General of the United Nations.

78. Upon enquiry, the Advisory Committee was informed that the Registrar-designate will commence work in January 2012 for a period of six months, with an advance team, to prepare for the functioning of the Arusha branch on 1 July 2012. As it was anticipated that the Registrar would be double-hatted with one of the Tribunals' Registrars, no cost implications were foreseen in this respect in the proposed budget. The Committee was further informed that, in the interest of transparency, the Secretary-General has issued a vacancy announcement for the position of Registrar. Should neither of the incumbent Registrars of the Tribunals be selected, the Committee was informed that resources would be reprioritized where possible, and if necessary, additional resource requirements would be requested in a revised budget. **The Committee recognizes that the issuance of a vacancy**

announcement for the position of Registrar would ensure a transparent and competitive selection process. The Committee notes, however, that should the successful candidate not be one of the two incumbent Registrars of the Tribunals, there will be budgetary implications. The Committee trusts that whatever the outcome of the selection process, the costs of the position of Registrar will be absorbed within the proposed budget.

79. Upon enquiry, the Advisory Committee was informed that the advance team would comprise three members of staff of the Mechanism: Chief Archivist (P-5), Legal Officer (P-4) and Administrative Officer (P-4). These three posts are included within the request for the establishment of 67 posts (see para. 73 above). It is also indicated that the advance team can be supplemented by up to six positions funded through general temporary assistance in the areas of human resources, financial management, property management, information technology and general services. These six positions are included within the request for 154 positions proposed to be funded through general temporary assistance (see para. 75 above).

80. Article 27.2 of the statute of the Mechanism provides that the archives of the Tribunals shall be co-located with the respective branches of the Mechanism. The Advisory Committee was informed that the archives of the International Criminal Tribunal for Rwanda have deteriorated owing to current storage conditions, which were deemed by an audit of the Office of Internal Oversight Services to be unsuitable. The Committee was further informed that the current premises of the International Criminal Tribunal for Rwanda are rented and shared with other entities, posing a security situation that does not fully comply with the headquarters minimum operating security standards. The Committee notes, from the supplementary information provided to it, that the proposed budget for the Mechanism therefore includes an amount of $5,500,000 for the construction of new premises in Arusha to serve as the long-term location of the Arusha branch and the Tribunal archives. The new purpose-built facility in Arusha will include one court room office facility where the Arusha branch will conduct its residual judicial activity.

Posts

81. As outlined in paragraph 73 above, the Secretary-General is requesting the establishment of 67 posts for the Mechanism, which amounts to proposed resource requirements of $9,765,200 before recosting (see table 4 above).

Non-post resources

82. The Secretary-General is requesting funding through general temporary assistance for 154 positions for an average of 12 months for the Mechanism. Resource requirements under other staff costs, including general temporary assistance, are estimated at $16,759,500 before recosting.

83. Contractual services, which include defence counsel costs, are projected at a total of $3,915,100 before recosting. The Advisory Committee notes, from the supplementary information provided to it, that defence counsel fees and related costs at both trial and appellate levels are estimated at $2,993,500, based on the lump-sum system.

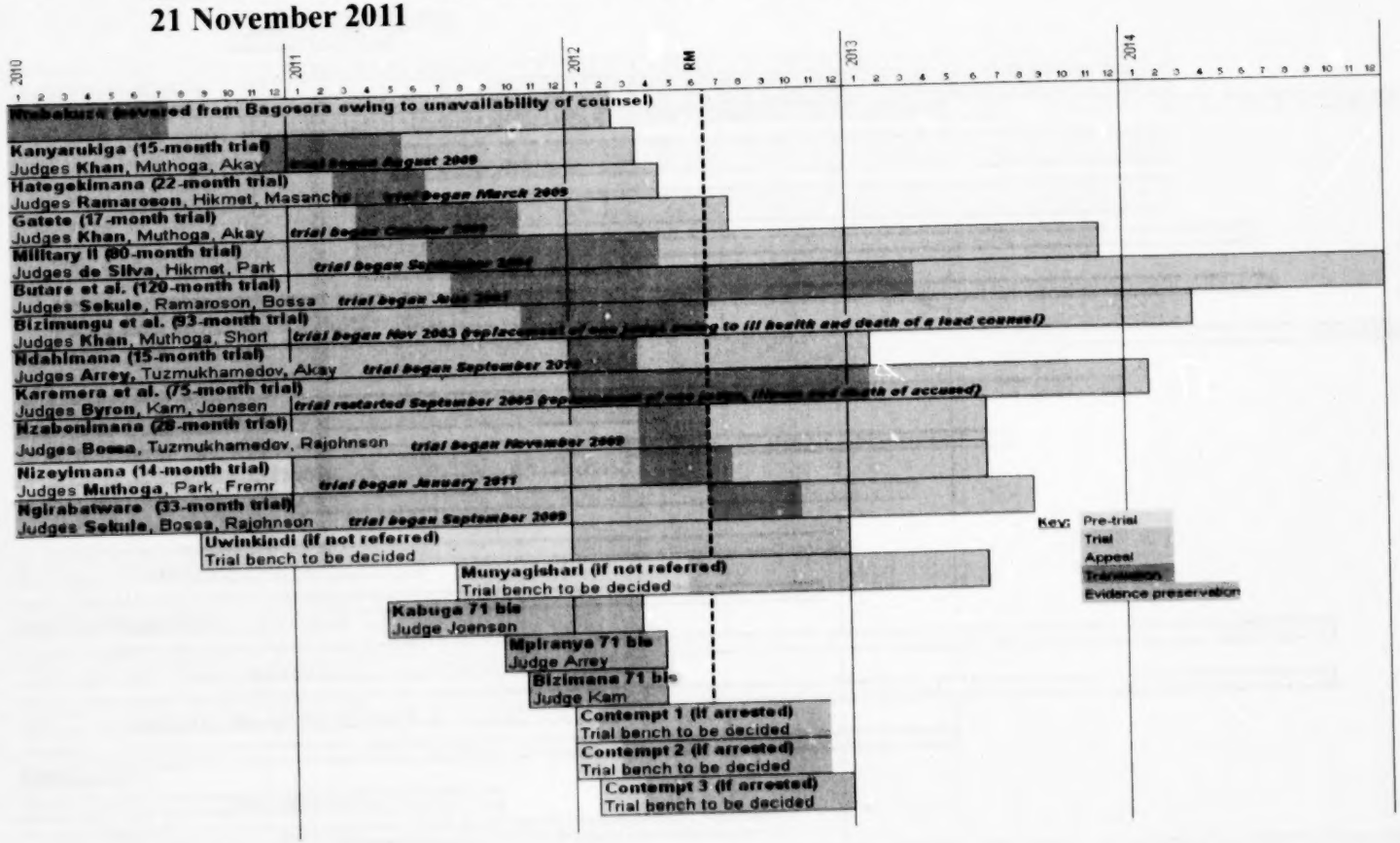
84. A provision under improvement of premises, estimated at a total of $5,520,000, is included in the proposed budget for the construction of the new purpose-built facility in Arusha to house the archives and the Arusha branch and for related cleaning and refurbishment costs. **The Advisory Committee encourages the close monitoring of the construction project to ensure its timely completion.**

85. Upon enquiry as to the applicable scale of assessments for the International Residual Mechanism, the Advisory Committee was informed that given that the Mechanism would continue the Tribunals' activities, the Secretary-General has assumed that the current financing arrangement applicable to the Tribunals would also be applicable to the Mechanism.

86. **The Advisory Committee recommends: (a) the approval of the proposed budget for the International Residual Mechanism for the biennium 2012-2013; (b) the approval of the establishment of 67 posts during the biennium 2012-2013; and (c) the appropriation of a total amount of $50,434,400 gross ($46,827,900 net), before recosting, for the Mechanism for the biennium 2012-2013.**

Annex I

International Criminal Tribunal for Rwanda projected schedule as at 21 November 2011

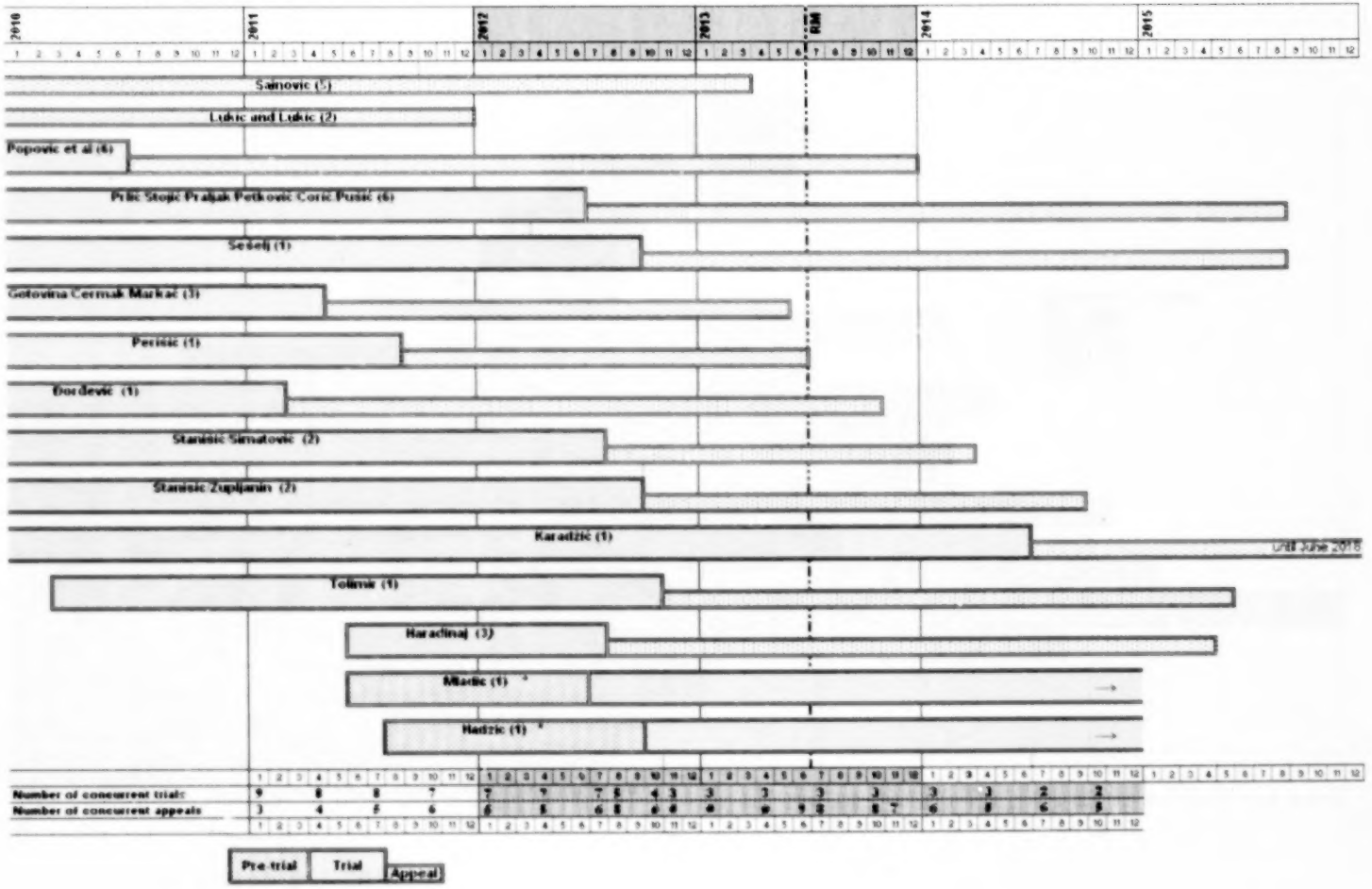


Other work

- Reviewing approximately 500 witness protection orders
- Review of seven amended indictments with respect to fugitives
- Decisions in at least two further 11 bis applications

Annex II

Projected forecast, at the time of budget preparation, for pretrial, trial and appeals proceedings at the International Tribunal for the Former Yugoslavia



[a] Completion date not yet determined.

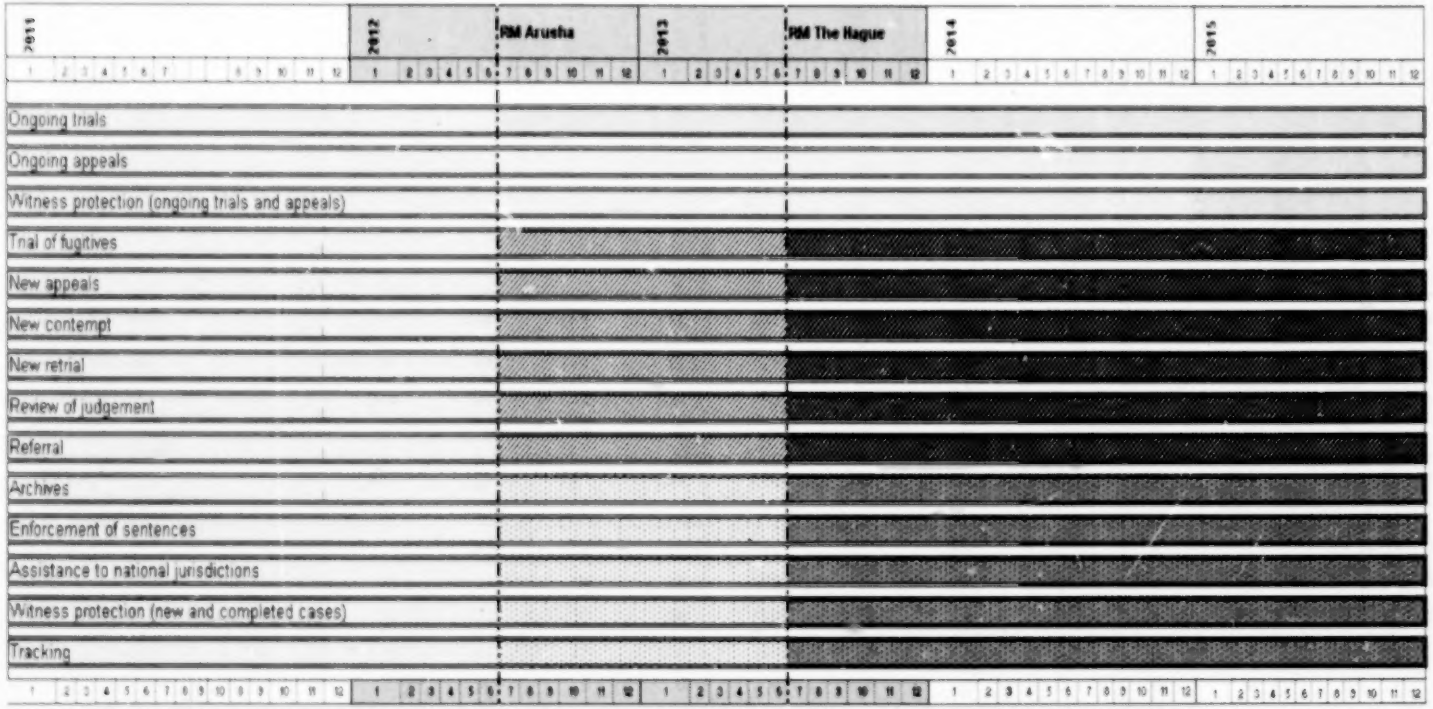
Annex III

Proposed phasing out of positions funded under general temporary assistance at the International Tribunal for the Former Yugoslavia during the biennium 2012-2013

	December 2011	*January 2012*	*April 2012*	*July 2012*	*August 2012*	*October 2012*	*November 2012*	*December 2012*	*January 2013*	*February 2013*	*July 2013*	*November 2013*
Under-Secretary-General	0	0	0	0	0	0	0	0	0	0	0	0
Assistant Secretary-General	0	0	0	0	0	0	0	0	0	0	0	0
D-2	0	0	0	0	0	0	0	0	0	0	0	0
D-1	0	0	0	0	0	0	0	0	0	0	0	0
P-5	6	11	11	11	10	8	7	7	7	7	7	6
P-4	24	32	30	29	25	17	14	14	14	14	13	13
P-3	58	76	74	74	68	58	50	50	49	39	31	29
P-2	34	41	40	40	37	31	26	25	24	21	21	21
Total Professional level and higher	**122**	**160**	**155**	**154**	**140**	**114**	**97**	**96**	**94**	**871**	**72**	**69**
General Service (Principal level)	0	0	0	0	0	0	0	0	0	0	0	0
General Service (Other level)	113	125	125	124	118	99	75	75	73	73	66	66
Security Service	41	34	34	33	33	21	21	21	21	21	21	21
Overall total	**276**	**319**	**314**	**311**	**291**	**234**	**193**	**192**	**188**	**175**	**159**	**156**

Annex IV

Timeline for transfer of functions to the International Residual Mechanism



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Letter dated 7 December 2011 from the Permanent Representatives of Afghanistan and Turkey to the United Nations addressed to the Secretary-General

We have the honour to enclose herewith the text of the "Istanbul Process on Regional Security and Cooperation for a Secure and Stable Afghanistan" adopted in Istanbul, Turkey, on 2 November 2011 (see annex).

We request your kind assistance in circulating the present letter and its annex as a document of the General Assembly, under agenda item 38, and of the Security Council.

(*Signed*) Zahir **Tanin**
Permanent Representative of Afghanistan
to the United Nations

(*Signed*) Ertuğrul **Apakan**
Permanent Representative of Turkey
to the United Nations

11-63266 (E) 161211

Please recycle

Annex to the letter dated 7 December 2011 from the Permanent Representatives of Afghanistan and Turkey to the United Nations addressed to the Secretary-General

Istanbul Process on Regional Security and Cooperation for a Secure and Stable Afghanistan

2 November 2011

1. We have convened in Istanbul on 2 November 2011, under the leadership of H.E. Mr. Hamid Karzai, President of the Islamic Republic of Afghanistan, and H.E. Mr. Abdullah Gül, President of the Republic of Turkey, and at the joint invitation of H.E. Mr. Zalmai Rassoul, Foreign Minister of the Islamic Republic of Afghanistan and H.E. Mr. Ahmet Davutoğlu, Foreign Minister of the Republic of Turkey, to reaffirm our strong commitment to a secure, stable and prosperous Afghanistan in a secure and stable region.

2. We affirm the commitments enshrined in the 2002 Kabul Declaration of Good Neighbourly Relations and agree that promoting regional security and cooperation requires measures to build confidence and trust among countries. Hence, we will be guided by the following set of common principles and commitments, which shall include, but not be limited to:

- Recognition of the central role of the United Nations in international affairs
- Equal and indivisible security
- Respect for the territorial integrity of States
- Non-intervention in the internal affairs of other States
- Support for the stability and peace in Afghanistan, as well as respect for Afghanistan's sovereignty, unity and territorial integrity
- Continued support for the Government and people of Afghanistan, as they develop their country, reconstruct their economy, and further improve their human capital
- Resolutely combating and eliminating terrorism in all its forms and manifestations and violent extremism, and preventing safe havens for terrorists and terrorism in the region
- Dismantling terrorist sanctuaries and safe havens, disrupting all financial and tactical support for terrorism
- Acknowledging that terrorism poses a threat to international peace and security as well as a common challenge to our societies, to the region, and that it can only be addressed through the concerted efforts of all countries
- Facilitating the voluntary, dignified, and orderly return of Afghan refugees
- Support for an inclusive Afghan national process of reconciliation, in accordance with the Constitution of Afghanistan and in ways which is Afghan-led, Afghan-owned and Afghan-driven
- Constructive and supportive relationship between countries of the region

- Refraining from the threat or use of force and not to allow one's territory to be used against another
- Elimination of illicit drug production, trade and trafficking
- Preventing the cultivation and production of narcotics
- Preventing the activities of extremist organizations and organized crime networks through enhanced cooperation
- Supporting and promoting law enforcement cooperation
- Peaceful settlement of disputes in accordance with the United Nations Charter and international law
- Fulfilment of obligations under international law

3. Afghanistan and its international and regional partners will seek to develop and coordinate contributions to advance the above-stated principles.

4. We recognize Afghanistan's role as the land bridge in the "Heart of Asia", connecting South Asia, Central Asia, Eurasia and the Middle East, and reaffirm our support in the strongest possible terms to the secure, stable and peaceful future of Afghanistan. We welcome Afghanistan's willingness and determination to use its regional and historical position to do its part to promote security and peaceful economic cooperation in the region.

5. We respect Afghanistan as a sovereign, independent, democratic State, which constitutes an integral component of the peace, well-being and prosperity of the region and beyond. We support the Government of Afghanistan's priorities on the issues of security, governance, economy, counter-terrorism, counter-narcotics and regional cooperation.

6. We re-emphasize our determination to help Afghanistan fight terrorism and illicit drugs. In return, Afghanistan reiterates its commitment to respect the territorial integrity of its neighbours, and to assure them that its relations with any State, on which it will be transparent, will not be directed against any third party. Afghanistan also reconfirms its will and determination to combat terrorism in all its forms and manifestations, strengthen its economy, especially by ensuring good governance, promotion of investments, and addressing corruption, fight radicalism and narcotrafficking, respect human rights, in particular the rights of women, and to work together with its friends and partners for enhanced regional cooperation.

7. We reiterate our resolve to combat terrorism, extremism and separatism in all its forms and manifestations, the financing, harbouring, training and equipping of such activities, and acknowledge that terrorism, extremism and separatism pose a common challenge that can only be addressed through concerted efforts by countries of the region and the broader international community.

8. We will strengthen cooperation with Afghanistan, as well as regional and international cooperation, to counter the threat posed by the illicit production, trafficking, and consumption of drugs, in accordance with the principle of common and shared responsibility. Cooperation in combating the illicit drug production, trafficking and consumption should be exercised in a comprehensive manner and comprise poppy and cannabis crop eradication, elimination of drug laboratories, interception of drug caravans, detention of drug traffickers, freezing proceeds from

illicit drugs, diversion of drug precursors, as well as introduction of alternative agriculture projects and strengthening measures directed at reduction of the level of drugs consumption in regional and international markets.

9. In assisting Afghanistan, we endorse its efforts at promoting an inclusive reconciliation process and welcome and support the efforts of the High Peace Council, and the implementation of the Afghan Peace and Reintegration Programme. We strongly condemn the heinous terrorist attack which took the life of the former President and Head of the High Peace Council, Professor Burhanuddin Rabbani. We will continue to support Afghan-led efforts to reconcile and reintegrate those Afghan militant elements who renounce violence, cut links with terrorist groups, and accept the Afghan Constitution. We remain convinced that a peaceful Afghanistan, with functioning institutions and strengthened security forces, is key to a successful regional cooperation. We remind that the international community and the region are not separated and emphasize that we all have a stake in the security and stability of the region.

10. We mark our full support to the ongoing process of transition of responsibility for providing security in Afghanistan from the International Security Assistance Force/North Atlantic Treaty Organization to the Afghan National Security Forces in the framework of the "Kabul Process". We remain convinced that progress to be made between now and 2014, when transition will be completed, will make a decisive impact on the future course of efforts under way in Afghanistan. However, transition should assist Afghanistan and development of its relevant structures with a sustained support in the form of long-term commitments to be made by regional and international partners. We welcome ongoing efforts by the Government of Afghanistan and its regional partners to foster trust and cooperation with each other as well as relevant cooperation initiatives developed by the countries concerned and regional organizations. The promotion of a sound regional cooperation in the "Heart of Asia" will be an important contribution to these efforts. In this context, enhanced trade connectivity along historical trade routes will also constitute an added value and will require conducive regional environment.

11. We recognize that Afghanistan is today at a critical juncture. It still faces significant security, economic, and development challenges, which are of an interconnected nature. These challenges cannot be addressed without building upon the already constructive support of Afghanistan's regional and international partners. The efforts to meet these challenges are most effective when they are Afghan-owned and driven, and supported by all partners and pursued in a transparent and constructive manner.

12. While not all challenges specifically affect each country in similar degree, no single State or international organization can deal with these challenges by itself. A concerted effort towards stability and prosperity is needed. Consequently, regional and international cooperation are indispensable to address challenges.

13. We declare our readiness to engage in sincere, result-oriented cooperation at all levels, which will not just help Afghanistan, but will also be beneficial to security and prosperity in the region as a whole. We welcome the central and impartial role of the United Nations, in line with the Security Council mandate, and we recognize the important role of the Organization for Islamic Cooperation, the Shanghai Cooperation Organization, the South Asian Association for Regional Cooperation, the Regional Economic Cooperation Conference on Afghanistan, the

Conference on Interaction and Confidence-Building Measures in Asia, the Economic Cooperation Organization, the Eurasian Economic Union, the Collective Security Treaty Organization, the United Nations Special Programme for the Economies of Central Asia, and the Central Asia Regional Economic Cooperation in strengthening regional security and promoting regional cooperation. We welcome the participation of Afghanistan in the South Asian Association for Regional Cooperation and in the Conference on Interaction and Confidence-Building Measures in Asia, the Organization for Security and Cooperation in Europe, as well as its application to obtain the status of observer State with the Shanghai Cooperation Organization.

14. Similarly, we also positively take note of those bilateral, trilateral and quadrilateral initiatives between Afghanistan and the regional countries that could contribute to the improvement of regional cooperation. We welcome and support all these mechanisms, organizations and processes that add value to regional dimension. We also welcome various efforts aimed at intensifying cooperation and dialogue between Afghanistan and regional countries, recognizing the intertwined nature of various challenges faced by all countries in the region. Our regional cooperation vision is not intended to substitute them, but to build synergy between these efforts.

15. These fundamental frameworks and principles of cooperation among countries are unequivocally pertinent in dealing with challenges. We note the value of a more coherent and structured approach to individual initiatives. We pledge to give strong emphasis and further impetus to the ongoing regional cooperation endeavours.

16. With this understanding, based on the principles, including guarantees of territorial integrity, sovereignty and refraining from the threat or use of force to resolve disputes; guarantees for non-intervention in the internal affairs of other States; and peaceful settlement of disputes according to international law, stated in this document, we will endeavour to build confidence through broad ranging and effective confidence-building measures, where appropriate and based on self-differentiation basis, which may include, but not be limited to, the areas listed hereafter.

(A) In the political and security field:

- Enhanced cooperation for fighting terrorism, including through exchange of information
- Participation in civil emergency planning to assess risks and reduce vulnerability of the civil population to terrorism
- Enhancement of cooperation among Afghanistan and its immediate neighbours for effective border controls
- Creation or enhancement of conditions conducive to the voluntary and safe return of refugees, in a dignified and orderly manner
- Exchange of information regarding forces responsible for counter-terrorism operations and facilitate contacts among them as appropriate
- Cooperation and interaction among regional countries in the area of counter narcotics and the trafficking of illegal goods and lethal substances, and their

precursors, including enhancing bilateral efforts to prevent illicit movement of personnel and material across international borders

- Development of joint guidelines for cooperation in the field of disaster management

(B) In the economic field:

- Build, where appropriate, on the model of the Afghanistan-Pakistan Transit Trade Agreement, ways to expand trade across the region
- Trade facilitation strategy: the development of a coherent strategy to develop a regionally coherent trade and border management
- Preferential Trade Agreement within the region without prejudice to existing trading agreements
- Establishment of databases and a system of data exchange in trade and economic spheres
- Improvement of the exchange of information on commercial opportunities and specific trading conditions
- Improvement in the provisions for the settlement of commercial disputes, including various forms of arbitration
- A strategy to encourage participation of the private sector in regional development programmes, including through private sector-public sector joint ventures
- Exchange of information on development of international tourism and tourist infrastructure and assistance in establishing and strengthening contacts
- Exchange of information regarding suspicious financial transactions, illegal financial operations and assistance in establishing and strengthening contacts between appropriate authorities
- Facilitation of the development of cooperation in the various fields of environment
- Improvement of business contacts and facilities
- Encourage the establishment of a framework for enhanced cooperation among Chambers of Commerce
- Training of personnel in various fields of economic activity
- The development of a coherent strategy to develop and maintain a regionally connecting infrastructure, with support from international partners
- Encouraging Afghanistan's role as a land-bridge, connecting the region through cooperation and completion of bridges on transboundary rivers, roads and railway networks; in this connection, focusing on construction of new automobile bridges over the Panj River in Kokul and Ayvaj fields of Tajikistan and supporting the implementation of the project on a railway route from East, Central, South and West Asia and to the sea routes through Kyrgyzstan, Tajikistan and Afghanistan with existing Uzbekistan-Afghanistan railway being connected to a prospective Kazakhstan-Turkmenistan-Afghanistan

railway, and supporting the implementation of the project on a railway route from Iran to Afghanistan, the Khaf-Herat Railway

- Cooperation on easier flow of energy resources within, from and across the region, especially with regard to electricity, minerals, oil and gas, including their exploitation and transit, through regional projects, such as the Turkmenistan-Afghanistan-Pakistan-India pipeline and the Central Asia South Asia Electricity Trade and Transmission Project which has to be implemented with a broader financial contribution, as well as the World Bank, Asian Development Bank and Islamic Development Bank

- Wider support for Tajikistan's efforts to conduct the Fifth Regional Economic Cooperation Conference on Afghanistan (RECCA V) which is planned to be held on 26-27 March 2012 in Dushanbe. Among other agenda items, the Conference will consider the proposal from Afghanistan and Tajikistan on enhancing trade connectivity along historical trade routes. On the margins of the RECCA V, we support the organization of a business forum and a forum of scientists and researchers

- Exploring the possibility of cooperation in the development of hydroelectric power and in the sphere of water management without prejudice to existing agreements

- Consider, wherever appropriate and mutually agreed, development of large-scale irrigation works without prejudice to existing agreements

- A more effective regional cooperation in the agricultural and rural fields

- The development of infrastructure around the main ports and linking them via road and railroad for shipment of goods and energy to and from Central Asia, South Asia, Eurasia and the Black Sea

(C) In the education field:

- Setting up a structured regional education exchange programme with places reserved in universities for students from neighbouring States within the region

- Broadening cooperation and exchanges in the fields of education and science on a short or long-term basis

- Expansion of links between State institutions and non-governmental bodies whose activities are concerned with questions of education and science and including scientific exchanges, exchange of students, joint events

- Ensure that radical and hatred references are removed from education curriculum

- Reform the curricula that promote extremism

- Promotion of the role of mass media as a driver for democratic development and mutual understanding, and to spread messages of peace, harmony and tolerance

- Establishing a multidisciplinary professional and technical training centre in Tajikistan which is aimed at preparing civilian specialists for the needs of the Afghanistan economy, with support of international community

(D) In the cultural field:

- Joint projects aimed at disseminating information on various cultures and traditions in the region
- Cooperation in preserving valuable cultural, historical, archaeological and religious assets
- A common fight by all nations in the region against all forms and manifestations of violence
- A joint effort to promote the true nature of Islam as a religion of peace, tolerance and human accomplishment
- Promotion of interfaith and intracultural dialogue

(E) In the legal field:

- Considering, where appropriate and on the basis of reciprocity, relaxation of visa regimes
- Considering relaxation of rules and restrictions at border crossings for legitimate travellers on the basis of reciprocal arrangements
- Promotion of law enforcement cooperation

17. Through the Istanbul Process, we reaffirm our commitment to strengthening regional security and cooperation, including for the purpose of building a secure and stable Afghanistan. To that end, we have decided to redouble and better coordinate our efforts through bilateral channels and existing multilateral frameworks and future meetings at Ministerial and technical level. The Istanbul Process will be developed and marked by consensus decision-making of participating States.

18. In this regard, we will continue to exchange views on ways and means to implement our decisions.

19. As the first follow-up on the Istanbul Conference, we have decided to meet again at the ministerial level in Kabul in June 2012.

20. The Kabul Ministerial meeting will be preceded by a preparatory meeting at technical level chaired by Afghanistan. To that effect, Afghanistan will circulate a concept paper by the end of January 2012, outlining the agenda of the meeting.

21. Having stated the above, we recognize that the challenge we intend to meet remains considerable. But, through these confidence-building measures, we are aiming at a new mindset of cooperation in the region.

22. The ambitious objective of enhanced regional cooperation, with and around Afghanistan, will need to overcome many hurdles. However, the benefits for Afghanistan and its region will reward this ambition and be worth the endeavours.

23. The participants to the Istanbul Conference wish to express their gratitude to the Republic of Turkey for the generous hospitality and commitment to promoting regional cooperation.

Adopted on 2 November 2011 by the "Heart of Asia" Countries which consist of the Islamic Republic of Afghanistan, the People's Republic of China, the Republic of India, the Islamic Republic of Iran, the Republic of Kazakhstan, the

Kyrgyz Republic, the Islamic Republic of Pakistan, the Russian Federation, the Kingdom of Saudi Arabia, the Republic of Tajikistan, the Republic of Turkey, Turkmenistan, and the United Arab Emirates.

Welcomed and supported by the Commonwealth of Australia, Canada, the Arab Republic of Egypt, the Republic of France, the Federal Republic of Germany, Republic of Italy, Japan, Norway, Republic of Poland, Spain, Sweden, the United Kingdom and the United States as well as the United Nations, Economic Cooperation Organization, Organization for Security and Cooperation in Europe, North Atlantic Treaty Organization, Shanghai Cooperation Organization, South Asian Association for Regional Cooperation, Organization for Islamic Cooperation, the European Union, the Conference on Interaction and Confidence-Building Measures in Asia.